A

General Syſtem

OF THE

LAWS

CONCERNING

BANKRUPTS;

CONTAINING

Every Caſe that may happen either to a Bankrupt, Creditor, or Aſſignee; with full Inſtructions from the taking out a Commiſſion to the making a final Dividend; together with approved Precedents of Affidavits of Debt, Bond, Petition, Commiſſion, Memorandums, Depoſitions, Claims, Aſſignments, Bargain and Sale, Petitions, Orders of Dividend, Certificate, and whatever elſe is neceſſary to be reduced into Writing under a Commiſſion. Alſo the Names and Places of Abode of all the Commiſſioners of Bankrupts.

By a Commiſſioner of BANKRUPTS.

VOL. II.

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A General Syſtem, &c.

CHAP. XXII.

How far the Acts of a Bankrupt, from the Time of the Bankruptcy, ſhall be over-reached: And herein,

1. As to his receiving Debts due to him from his Debtors.
2. As to his ſelling his Goods, *bona fide.*
3. As to his ſelling or mortgaging his Lands.
4. As to his pledging his Goods.
5. As to his paying Debts due before the Bankruptcy.
6. As to his aſſigning Debts.

1. *As to his receiving Debts due to him from his Debtors.*

"A Bankrupt may receive his Debts after an Act of Bankruptcy committed, from ſuch of his Debtors as do not know him to be a Bankrupt," and the Payment will be good. 1 Jac. c. 15. ſect. 14.

Payment by the Debtor of a Bankrupt, either to the Bankrupt himſelf or to his Creditor, before Notice of the Bankruptcy, and before the Commiſſion ſued forth, is a Diſcharge againſt the Commiſſioners or the Aſſignee. *Grove* v. *Smith.* 3 Keb. 190.

3 Keb. 230. Payment to a Bankrupt after Notice is void; but if no Notice, or if the Party be compelled to pay by Suit, before any Commiſſion ſued out, it is a good Diſcharge; and formerly, till the Commiſſion ſued out, the Debtor ought not to repay, though he had Notice of the Bankruptcy. *Prin* v. *Beal.*

Freem. 349. If a Man pays Money due to a Bankrupt before Notice, he ſhall not be charged for it again; but if he have Notice, and it be recovered from him by Law, yet he ſhall not be charged; for, perhaps, Nobody will take any Commiſſion out againſt him. *Pym* v. *Benſon.*

Vern. 94. 2 Vent. 358. If a Man voluntarily pays Money to a Bankrupt after he becomes ſo, it is in his own Wrong, and he may be forced to pay it again; but otherwiſe it is, if the Bankrupt recovers it againſt him by due Courſe of Law. *Noel* v. *Robinſon.*

What Creditors not liable to refund. 19 Geo. 2. c. 32. "No Perſon who is or ſhall be *bona fide* "Creditor of any Bankrupt, for or in re- "ſpect of any Goods really and *bona fide* ſold "to ſuch Bankrupt, or for or in reſpect of "any Bill of Exchange really and *bona fide* "drawn, negotiated, or accepted by ſuch "Bankrupt, in the uſual and ordinary Courſe "of Trade and Dealing, ſhall be liable to "refund or repay to the Aſſignee of ſuch "Bankrupt's Eſtate, any Money, which, be- "fore the ſuing forth of ſuch Commiſſion, "was really and *bona fide*, and in the uſual "and ordinary Courſe of Trade and Deal- "ing, received by ſuch Perſon of any ſuch "Bankrupt, before ſuch Time as the Perſon "receiving the ſame ſhall know, under- "ſtand,

"ſtand, or have Notice, that he is become "a Bankrupt, or that he is in inſolvent "Circumſtances."

2. *As to the Bankrupt's ſelling his Goods* bona fide.

All Perſons buying Goods of a Bankrupt, not knowing him to be ſo, and paying for them *bona fide*, ſhall be received in the Equity of the Proviſoe in the above Statute of 1 *Jac. c.* 15. *ſect.* 14. and ſee now the ſaid Statute of 19 *Geo.* 2. *c.* 32. 2 Show. 522.

Aſſignee of the Commiſſioners of Bankruptcy againſt *P.* exhibited his Bill againſt the Defendant, to diſcover Goods, *&c.* which were the Bankrupt's at the Time of his breaking; the Defendant pleaded, that he was Purchaſer for full and valuable Conſideration, and at the Time of his Purchaſe, until the now Bill, had no Notice that *P.* was a Bankrupt, nor of any Commiſſion, and pleads this Matter againſt any Diſcovery. After long Debate, Lord K. *North* ſeemed to incline, that the Defendant, being a Purchaſer without Notice, ſhould not be prejudiced by this Court; but that if the Sale were at an extreme under Value, as for 5 *s.* or the like, then ſuch a General Plea ſhall not ſtand; and after long Debate, whether the Defendant ſhall ſet forth what the Goods were, or what the Defendant paid for them, it was concluded that he ſhould, ſo as the Plaintiff ſhould conſent to take no Advantage of the Diſcovery but here in this Court only, and not at Law, which the 2 Ch. Caſ. 156, 157.

Plaintiff conſented to by his Counſel, and to ſubſcribe his Conſent with the Regiſter, and then the Defendant was to anſwer. *Wagſtaff* v. *Read.*

2 Ch. Caſ. 72, 73. The Defendant bought of *P.* Jewels, Plate, *&c.* for valuable Conſideration paid; *P.* became a Bankrupt, and a Commiſſion was taken out againſt him, and the Commiſſioners examined *B.* the Defendant, touching the Goods, what they were, and the Value of them; but on Pretence that he did not anſwer, the Commiſſioners committed him, but on *Habeas Corpus* in *B. R.* he was delivered; the Anſwer before the Commiſſioners being as to the Time, *&c.* to his Remembrance, and that he could not poſitively anſwer farther, and by Conſent he was again to attend and to be examined, which he did. And now the Plaintiff's Bill is to have the Defendant's Anſwer in Chancery, where he pleaded that he had no Goods of *P.*'s, but ſuch as he really paid for before the Commiſſion iſſued againſt *P.* and that he had no Notice of any Act or Thing by *P.* whereby he was a Bankrupt, but truly paid for what he bought, *&c.* It was objected, he ought to anſwer the Time of Bankruptiſm, elſe the Statute againſt Bankrupts will be of little Effect. *E contra*, it is no Equity in ſuch Caſe to make a Man pay twice. *Ld. Chancellor* ruled the Plea good, ſaying, it is an infallible Rule, that a Purchaſer for a valuable Conſideration ſhall never without Notice diſcover any Thing to hurt himſelf; but as to the Point of Bankruptiſm, whether that the Defendant being formerly examined

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by the Commiſſioners on Oath, ſhould be examined, or put to anſwer to the ſame Matter? Here the *Chancellor* ſeemed to be of Opinion that he ſhould; but the other Point being clear, there was no Debate on this. *Perrat* v. *Ballard.*

Equity will not compel a Man to diſcover what Goods he really bought of a Bankrupt after the Bankruptcy and before the Commiſſion ſued out, where the Party has no Notice of the Bankruptcy. *Abery & al'* v. *Williams.* Vern. 27.

And Contracts made where there is *quid pro quo*, the Bankruptcy ſhall not over-reach. Skin. 21, 149. 3 Lev. 58.

And the Reaſon is, that if it were otherwiſe, it would be a great Prejudice to Trade, inſomuch, that it would not be carried on with any Safety, and the Law would be a Snare for the innocent and fair Contractor, who cannot poſſibly have any Notice of the Act of Bankruptcy. N. B. This Doctrine is doubtful, therefore *Quere.*

3. *As to the Bankrupt's ſelling or mortgaging his Lands.*

If a Man ſells or mortgages his Land, the Bankruptcy will over-reach it, although the Purchaſer had no Notice of the Bankruptcy, if the Commiſſion iſſues within five Years after the Act of Bankruptcy committed, becauſe this is a Miſchief which does not immediately concern Trade; and he who buys Land, does it at his *Peril*, ſubject to all ſuch Incumbrances as Lands are liable to. 2 Show. 522.

7 Vin. Abr. 119. (K. a.) pl. 1.

Lord Chan. Talbot ſaid, There are Frauds which Equity can only relieve againſt; and there are other Frauds where particular Acts of Parliament make the legal Act void, &c. But that does not take away the Juriſdiction of this Court, which can give fuller and more particular Relief; and a pretended Sale of Lands by *Ward*, ſhortly before his Bankruptcy, to his Brother, on 1 *Jac.* c. 15. was ſet aſide on Bill by Aſſignees, whereby voluntary Conveyances by Perſons who after become Bankrupts, are void.

Objection, That ſuch a Conveyance would be void at Law, and need not come into this Court to ſet it aſide; *ſed non allocatur*. *De Golls* v. *Ward*.

7 Vin. Abr. 119. (K. a.) pl. 2. 2 Eq. Abr. 119. pl. 3.

Upon further Hearing of this Cauſe, Iſſue being directed to try the Bankruptcy of *John Ward*, upon Trial at Bar in *B. R.* in *Eaſter* Term laſt, he was found to become Bankrupt 26th of *Auguſt* 1725. And now upon the Equity reſerved, Plaintiffs (Truſtees for the *S. S.* Company) prayed an Account, and to ſet aſide Conveyances that *J. W.* had made ſince his becoming Bankrupt.

For Defendant *Knox Ward* and Wife it was inſiſted, that, previous to their Marriage, by Settlement in *June* 1729, in Conſideration of 4000 *l.* Portion and the Marriage, *J. W.* agreed to purchaſe Lands of 1000 *l. per Ann.* out of the Sale of particular Lands mentioned in that Settlement, which Lands were ſubject to ſeveral Truſts precedent to the Uſe of the Marriage; and that they, being Purchaſers, were protected by the Statute 21 *Jac.* c. 19. whereby it is provided, that no

Purchaſe

Purchaſe made of a Bankrupt, ſhall be impeached, where the Commiſſion does not iſſue within five Years after the Bankruptcy committed; and in this Caſe it did not, for the finding him to become Bankrupt is in *Auguſt* 1725, and the Commiſſion did not iſſue until *November* 1730.

Mr. Attorney General for *Knox Ward* and Wife argued, that though their Settlement is not by actual Conveyance, yet it is a Covenant which binds ſpecifick Lands, and a Purchaſer in Equity, and by Act is within the Intent of the Statute; for the Aſſignees are bound by the ſame Equity as the Bankrupt himſelf was, and cited the Cauſe of *Taylor* and *Wheeler*, *per* Lord *Cowper*. Beſides, here Defendant had no Notice of the Bankruptcy, which includes Notice of all the Acts which conſtitute the Bankrupt, as being indebted and trading, *&c.* and of this Opinion was Lord *Talbot* in the Caſe of Mr. *Tyſon*'s Bankruptcy, where an Iſſue was directed as to the Notice of his being a Trader. But the Statute *Jac.* 1. does not mention or regard the Caſe of Notice or not.

Mr. *Floyd* cited *Lev.* 13, 14. *Radford* v. ———. as in Point on the Statute *Jac.* 1, and in Equity the Settlement covenanted to be made, is to be conſidered as made, the Conſideration is unqueſtionable, *viz.* Marriage and a Portion.

Mr. *Brown* for the Plaintiffs argued, that Defendants have ſhewn no Conveyance to Defendant *Knox Ward*, ſo the Queſtion is, whether Plaintiffs are intitled to any Relief againſt *Knox Ward* and Wife? He agrees, that

that if they had been antecedent Purchaſers by Conveyance, and for valuable Conſideration, they would be protected. As to the Objection, That the Articles in Equity are to be conſidered as a Purchaſe, he ſaid, that in the Articles *John Ward* does not covenant to ſettle, *&c.* but only, as far as in himſelf lies, he would ratify and confirm the Articles; and the Covenant, *&c.* to ſettle is by *Knox Ward*, who under former Deeds was intitled to the Surplus of the Eſtate, which former Deeds were all ſubſequent to *J.* 79. his Father's Bankruptcy as to the Statute 21 *Jac.* it extends to actual Conveyances, and that are fairly and honeſtly made, and by Statute 13 *Eliz. c.* 7. as to Conveyances before Acts of Bankruptcy they are void, if the Purchaſers have Notice of the Fraud, *&c.* And it is ſtrange to ſay, that a Purchaſer after the Bankruptcy ſhould be protected, though with Notice of the Fraud, *&c.*

As to the Covenant by *Knox W.* on the Marriage Articles, it only relates to the general Surplus; ſo that this is in Nature only of a Security to raiſe, *&c.* to purchaſe, *&c.* All the Declarations of the former Truſts for the Benefit of *Knox Ward* are void by the Bankruptcy, and he was privy and Party to all thoſe Deeds which were fraudulent (and it was ſaid was the ſole Foundation of the Jury finding *J. W.* a Bankrupt); as to *Knox W.* not having Notice of the Bankruptcy, it is without Doubt he had and knew his Father to be a Trader; beſides the Statute, which makes the Acts done amount

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to a Bankruptcy, is Notice to him and every Body. As to the Wife and her Father, the ſeveral Deeds, &c. and pretended Tranſactions between *J. W.* and *K. W.* are all recited in the Marriage Articles, &c. But *per* Ld. Chan. *Hardwicke*, the Notice of the Deeds are not ſufficient, but that they were made with fraudulent Purpoſes. Whereupon Mr. *Brown* ſaid further, that the Purpoſe of the Deeds appear particularly from the very Deeds themſelves, and the Wife and her Father ſhould have made Enquiry as to the Nature and Intent of thoſe Deeds, &c. and that there is no Proof of Payment of the 4000 *l.* or of any Part.

Lord Chancellor ſaid, The great Difficulty of this Caſe is with reſpect to Mrs. *Ward*, the Wife, and the Iſſue of the Marriage; for as to *Knox Ward*, he appears to have been Party and Privy to the fraudulent Tranſactions of his Father. It is very rare that Attempts in Equity are made to ſet aſide a Marriage Agreement. He remembers *Shripton* v. *Mycherly* as the only one. As to the Objection, that this is only a legal Conveyance, he agrees it is not; but by the Articles the Surplus is ſubjected to make good the intended Purchaſe and Settlement, &c. and *J. W.* is Party to the Articles; there was no Notice to the Wife or Father of the Acts of Bankruptcy; as to Notice of the Deeds when the Bankruptcy aroſe that is not ſufficient; and you cannot come to impeach a Purchaſer in Equity without Notice, any more than you can a legal Conveyance, &c. It is not ſufficient to ſay that *Knox Ward* was

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intitled to the Surplus only as a Volunteer; for if ſuch ſell for a valuable Conſideration, the Purchaſer ſhall protect himſelf, *&c.* He thought a Purchaſer by Articles is a Purchaſer within the Saving of the Statute 21 *Jac.* ſo as to defend himſelf in Equity, *&c.* *Knox Ward* is not within the Statute, and he takes leſs by the Articles than he had before, *&c.* *Adjournatur.*

Afterwards *Lord Chancellor* declared, That he had ſpoke with the *Chief Juſtice* of *B. R.* who told him, that the Jury found *J. W.* Bankrupt from executing the Deed of the 25th of *Auguſt* 1725, and that no Act of Bankruptcy was proved before or after, but the Execution of that Deed, and no other Act of Bankruptcy until 1726.

The Parties then, by Direction of his Lordſhip, went into the Cauſe. The Marriage Articles of *Knox W.* were read, and Mr. Attorney General, of Counſel for *Knox W. & Ux.* ſaid, That the Statute ſecures Purchaſers generally, whether directly or indirectly, from Bankrupts, *&c.* And in Equity it is not material, whether the Purchaſe be by actual Conveyance, or by Articles, *&c.* and the Covenant binds, *&c.* and deſcends, *&c.* and cited the Caſe of *Kirk* and *Clark.* Pre. Ch. 223. As to the Objection, that *Knox W.* and his Wife, *&c.* are to be conſidered as having Notice, *&c.* there was no Evidence as to that, except what is collected from the Articles; but that is not ſufficient, nor any Thing but Notice of the Deeds, which made the Bankrupt in 1725. But then there ſhould be Notice, that the Creditors,

Creditors, for whom thoſe Deeds were made, were fictitious, *&c.* which was what made the Bankrupt. But ſuppoſe there was Notice that there had been an Act of Bankruptcy by Mr. *J. W.* in 1725, they nevertheleſs were protected by the Statute, becauſe the Statute is general, that no Purchaſer ſhould be impeached where the Commiſſion does not iſſue in five Years, *&c.* and aſked, if that is ſaying a Purchaſer without Notice? And the Statute which mentions Purchaſers, as the Statute of *Eliz.* for making void voluntary Settlements, don't regard whether there is Notice or not of the preceding Settlement; and the Reaſon of the Statute is, that if a Man continues to deal for ſo many Years, *&c.* without a Commiſſion of Bankruptcy taken out, his Acts ſhall be valid where they were for a Conſideration, an equitable Purchaſer is within the Statute, as in the other Caſe on the Statute of *Eliz.* As ſuppoſe *A.* pays a Conſideration for an Equity of Redemption, he ſhall be preferred in Equity to a voluntary Conveyance of the Equity of Redemption preceding. Upon the Equity of the Statute it was alſo objected, that this Purchaſe by the Marriage Articles is ſubject to the Power by *J. W.* in the Deed of *Sept.* 7, 1725, where the Power is to charge the Premiſſes with any further Sum for Payment of his Debts, and objected, that the Marriage Articles is ſubject to this, *&c.* Then as to theſe two Queſtions: Firſt, Whether the Marriage Settlement is ſubject to this Power? and ſecondly, Whether, if it be, this Power is transferred to the Plaintiffs

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or the Aſſignees? Firſt, the Power is not reſerved in the Marriage Articles; all that is there is, that after the Truſts performed in this former Deed, *&c.* Mr. *J. W.* ratifies and confirms, *&c.* the Power and Truſt; and *J. W.* agrees, that the Settlement be made of 1000*l.* a Year out of a Surplus ariſing after the Truſts, *&c.* as in the former Deed. The Power therefore is extinguiſhed by the Marriage Agreement, inconſiſtent with it as much as if it had been releaſed. Suppoſe *J. W.* had ſold the Eſtate, could he after execute the Power, *&c.* beſides, here *J. W.* in 1727 did appoint ſeveral Debts to be paid, *&c.* The next Queſtion will be, whether the Aſſignees (if the Power did ſtill exiſt) could have the Benefit of it; for the Plaintiff was cited, * *Jordan* v. *Savage*, heard before Lord *King*; but the Execution of this Power would charge the Eſtate he had ſold, *&c. i. e.* contracted for, which is a Sale in Equity; if the Statute had not transferred Eſtates in Tail, the Court would not have compelled the Bankrupt to have ſuffered a Recovery, or levied a Fine, *&c.* and yet this is a Power in the Bankrupt. If the Conveyance in 1725, by the Bankrupt, was void, then it remained in *J. W.* to convey for a valuable Conſideration. So if conſidered as voluntary only, he would have it ſtill in his Power to convey to a Purchaſer.

* See before, p. 177.

Lord Chancellor ſaid, This is an extraordinary Caſe, and he believed none like it before, and hoped never would again; and therefore it is incumbent on the Court to do all they can to prevent the like. Here appears

a Scheme of Fraud, through many Years, to defraud juſt Creditors; the Nature of the Caſe is of a Gentleman having a very great Eſtate, and not greatly indebted, except the Demand by the *S. S. Company*; the Deeds begin with the Conveyance of the twenty-fifth and twenty-ſixth of *Auguſt* 1725, and by ſubſequent Deeds all the real and perſonal Eſtate, even to Houſhold Goods, are veſted in Truſtees, to pay pretended Creditors, the Son joining with the Father, but not one of the pretended Creditors, and no Diſtreſs from any Creditor, *&c.* Amongſt other Truſts is the extraordinary Power in the Deed of the ſeventh of *September* 1725, for *J. W.* to charge any other Debts; and laſt of all the whole Surplus of all the Eſtates is veſted in the Son *Knox W.* then comes the Marriage Articles in *June* 1729, and therein every one of the former Deeds are recited to be in Conſideration of the Marriage of *K. W.* with Mrs. ——— and 4000 *l.* Portion (but not proved paid) the Surplus agreed to be ſubject to a Term of 200 Years, to pay 400 *l.* a Year to Mr. *J. W.* for Life, if he ſhall particularly demand it, and then for *K. W.* and his Wife, then to purchaſe Lands of 1000 *l. per Annum*, in Tail general to *K. W.* Remainder to his right Heirs, with Power, as to Portions for Children, and Power to Truſtees to provide Coach and Horſes for Mr. *J. W.* Then there is another Deed of ſooner Date by *K. W.* the Son, ſubjecting the Manor of *W.* to the ſame Uſes. A Bill was brought by the Aſſignees to ſet aſide theſe Deeds, *&c.* an Iſſue was directed, and the Jury find *J. W.* Bankrupt

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the twenty-ſixth of *Auguſt* 1725, being the Date of the firſt Deed of Releaſe, by which that Deed is over-reached, and the Judges certify, that this Deed was the Act of Bankruptcy, as being made to defraud his Creditors. The Queſtion is, What the Conſequence of this Verdict is? Firſt in Law, and next how in Equity. At Law this Deed and all ſubſequent ones are void; but it was objected from the Statute 21 *Jac.* that the Commiſſion of Bankruptcy was not taken out until the twentieth of *November* 1730, above five Years after the Act of Bankruptcy; and by a Clauſe in that Statute, Purchaſers in ſuch Caſe are not to be impeached, *&c.* but he holds, that this Clauſe only protects Purchaſers *bona fide* without Notice of the Fraud and Act of Bankruptcy. And here *Knox W.* muſt have had Notice of the Act of Bankruptcy, becauſe Party to the very Deed that made the Bankruptcy, ſo that *K. W.* is not protected by this Deed. Next here in Equity; and here muſt take Notice, that there are Circumſtances of actual Fraud, and here appears a long Series from 1725. The Power in the Deed of *September* 1725, to charge the Eſtate with any other Debts is Fraud apparent, becauſe it reſerves in Effect the whole Eſtate in the Bankrupt himſelf, *&c.* The next Conſideration is, how far the ſeveral Defendants are to be affected? This is to be conſidered in two Reſpects, Firſt, Under the Deeds from 1725, prior to the Articles. Secondly, How upon the Marriage Articles? Firſt, As to the Deeds prior to the Articles they concern the Truſtees for the pre-

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tended Creditors, and those Creditors; but no Proof of any real Debts; and the first Deed for that Reason found void, and therefore this is out of the Case. Then the Question is under those Deeds, How it stands with Mr. *K. W.* and he holds, that he is affected with the Act of Bankruptcy and Fraud, being Party to the first Deed, *&c.* and at best it is all voluntary as to him, and the Surplus in all the subsequent Deeds is reserved to him; next as to the Marriage; and here is the only Appearance of Difficulty; so as to the Persons provided for; and as to *J. W.* himself he cannot partake of the Consideration; all the Parties to be considered are, *Knox Ward* and Mrs. *Nettleton*, the intended Wife; and the Issue; first as to *Knox Ward*, his Case is not immediately the Marriage Articles, he had Notice of the Bankruptcy of his Father before. It was objected, That *K. W.* is to be considered as a Purchaser by the Articles, and the Statute not mentioning Notice, and where the Commission is not sued out within five Years, *&c.* he holds that Articles in Equity are the same as an actual Conveyance at Law, and no more to be impeached in Equity; but holds, that *K. W.* takes nothing under the Articles but what he had before, and it is strange for him to take more and better Interest than before; but suppose it so, he holds the Clause in the Statute 21 *Jac.* 1. not to be considered in the large Sense contended for, so as to extend to all Purchases; but holds, that this Clause is to be compared to the Clause in the Statute 13 *Eliz. c.* 7. which provides against

Purchaſers having Notice of the Fraud, &c. The Statute 21 *Jac.* takes notice of the former Acts againſt Bankrupts, and is for further Proviſion for Creditors, &c. therefore holds this like the Caſe, and warranted by the Conſtruction made on the ſeveral Statutes about Leaſes by Eccleſiaſtical Perſons. *Vent.* 244. *Bayly* v. *Bunning*, the laſt Reſolution in that Caſe; and ſo holds, that all the Statutes againſt Bankrupts are to be conſtrued together, and to be conſidered all as one Statute, &c. and no Pretence but Mr. *Knox W.* had Notice, &c. and therefore holds, that Mr. *Knox W.* cannot protect himſelf under the Statute. Next as to the Wife and Iſſue. Mrs. *N.* for what appears, is an innocent Perſon; no Evidence to ſhew her Father had any other Notice than what appears from the Deeds; but thinks Notice of the Deeds is not Notice of the fraudulent Intent of theſe Deeds, other than as to Mr. *K. W.* who was Party, &c. And if Mrs. *N.* had not Notice of the Bankruptcy, ſhe cannot be affected in Equity by the Bankruptcy. Next as to the Iſſue of the Marriage. Firſt, As to the Heirs of the Body of Mr. *K. W.* that is an Eſtate Tail in him; agrees, that in Marriage Articles, where the Limitation is to the Heirs of the Body by the Wife, there it ſhall be carried into ſtrict Settlement; but otherwiſe, where the Limitation is general, to all the Iſſue; and that this was the real Intent appears by the Proviſion of 6000 *l.* which is expreſly for the Iſſue of the Marriage, and extends to the eldeſt Son, as well as to the reſt of the Children. This 6000 *l.* is ſecured

by

by a Power and Truſt. He holds, that the Iſſue are to be affected with the Notice to the Father and Mother, and Truſtees; as to the Objection by Plaintiffs, that the Proviſion is of the Surplus only after the fictitious Debts, *&c.* but this would be ſtrange, and their Proviſion ought to be after what was really due. As to Mr *J. W.*'s Power to charge other Debts, he holds his joining in the Marriage was an Extinguiſhment of that Power, and amounted to a Revocation. Therefore held and decreed, the Marriage Articles to be ſet aſide, as to all the Uſes, except as to the Jointure of the Wife, and the 6000 *l.* for the Iſſue. *Read* v. *Ward.*

A. purchaſes of a Man who had committed an Act of Bankruptcy, but without Notice thereof; afterwards a Commiſſion iſſues, and there being a Term ſtanding out in Truſtees, the Aſſignee brings a Bill againſt them and the Purchaſer, to have the Term aſſigned to him; Bill diſmiſſed. *Wilkes* v. *Bodington.* 2 Vern. 599.

Mortgaging Land. 21 Jac. c. 19. ſect. 13.

"If any Bankrupt ſhall convey or aſſure "any Lands or Eſtate unto any Perſons upon "Condition, or Power of Redemption, at a "Day to come, by Payment of Money or "otherwiſe, it ſhall be lawful for the Com-"miſſioners, before the Time of the Per-"formance of ſuch Conditions, to appoint, "under their Hands and Seals, Perſons to "make Tender of the Money or other Per-"formance, according to the Nature of ſuch "Condition, as fully as the Bankrupt might "have done; and the Commiſſioners ſhall, "after ſuch Tender or Performance, have "Power to ſell ſuch Lands, for the Benefit

" of the Creditors, as fully as they may ſell " any the Eſtate of the Bankrupt."

2 Vern 157. *A.* makes a Mortgage, and afterwards a Commiſſion of Bankruptcy is taken out againſt him, and Commiſſioners make an Aſſignment of his Eſtate, and then *B.* lends 2000*l.* to the Bankrupt on a ſecond Mortgage, having no Notice of the Bankruptcy, and afterwards he gets in the firſt Mortgage. This prior Mortgage ſhall not protect the Mortgage ſubſequent to the Bankruptcy. *Hitchcox & al.* v. *Sedgwick & al.*

Mortgagee of a Bankrupt not to be impeached. Fin. Rep. 466, 467. *A.* mortgaged Lands, and afterwards became a Bankrupt; the Title of the Mortgagee ſhall not be impeached by the Commiſſioners or Aſſignees of the Statute of Bankruptcy. *Tanner* v. *Chapman.*

4. *As to a Bankrupt pledging his Goods.*

Barnard. K.B. 119. If a Man pledges his Goods after an Act of Bankruptcy, the Commiſſioners will overreach it, becauſe the pawning Goods does not immediately concern Trade as buying and ſelling does, and he who takes a Pawn does it at his Peril.

2 Stra. 813. See 2 Stra. 859. Barnard. K.B. 77, 118. *Satur*, a Bankrupt, at the Time of his going off left ſome Plate with his Wife, who, in order to raiſe Money upon it, delivered it to her Servant, who went along with the Defendant to the Door of Mr. *Woodward* the Banker, and there the Defendant took the Plate into his Hands, and went into the Shop and pawned it in his own Name, gave his

his own Note to repay the Money, and immediately upon Receipt of it, went back to the Bankrupt's Wife, and delivered the Money to her. And in *Trover* for the Plate, the Jury (considering the Defendant acted only as a Friend, and that it would be hard to punish him) found a Verdict for the Defendant; but upon Application to the Court, a new Trial was granted, upon the Foot of its being an actual Conversion in the Defendant, notwithstanding he did not apply the Money to his own Use, and upon a second Trial the Plaintiff obtained a Verdict for the Value of the Plate.

N. B. A Difficulty arose upon the Motion for a new Trial, which was this. There were other Things besides Plate in the Declaration, and as to them the Verdict for the Defendant was right; and yet a new Trial must be granted upon the Whole; but upon Consideration the Court held that could be no Reason to refuse a new Trial; for if the Merits as to those other Things were with the Defendant, it would be found for him as to them. But it was agreed on all Hands, that if one Defendant be acquitted, and another found guilty, that Defendant can have no new Trial. *Parker & al'* v. *Godin.*

Mortgaging Goods. 21 Jac. c. 19. sect. 13.

"If any Bankrupt shall convey or assure "any Goods unto any Persons upon Condi- "tion, or Power of Redemption at a Day "to come, by Payment of Money or other- "wise, it shall be lawful for the Commis- "sioners, before the Time of the Perform- "ance of such Condition, to appoint, under

"their Hands and Seals, Perſons to make "Tender of the Money or other Perform- "ance, according to the Nature of ſuch Con- "dition, as fully as the Bankrupt might "have done; and the Commiſſioners ſhall, "after ſuch Tender or Performance, have "Power to ſell ſuch Goods for the Benefit "of the Creditors, as fully as they may ſell "any the Eſtate of the Bankrupt."

5. *As to a Bankrupt's paying Debts due before the Bankruptcy.*

Vern. 94. Billing. 130. See 21 Jac. c. 19. ſect. 9.

If a Bankrupt pays Debts after the Bankruptcy, the Aſſignees may recover again the Money; if it were otherwiſe, it would be in the Power of the Bankrupt to prefer ſuch Creditors as he ſhould think fit, which is contrary to the Deſign of the Statutes concerning Bankrupts, which is, to put all Creditors upon a Footing.

6. *As to the Bankrupt's aſſigning his Debts.*

1 Jac. c. 15. ſect. 5. Debts transferred.

"If any Bankrupt ſhall transfer his Debts "into other Men's Names (except the ſame "ſhall be transferred for or upon Marriage "of any of his Children, both the Parties "married being of Years of Conſent, or "for ſome valuable Conſideration) they "ſhall be in the Power and Authority of the "Commiſſioners, to diſpoſe thereof in as "ample Manner as if they were in his own

"Name,

" Name, of the like Intereſt, to his own Uſe
" at ſuch Time as he became Bankrupt."

" Every ſuch Diſpoſition of the Commiſ- Ibid.
" ſioners ſhall be good and available, to all
" Intents and Purpoſes in the Law, againſt
" the Bankrupt, his Heirs, Executors, Ad-
" miniſtrators and Aſſigns, and ſuch Child-
" ren and Perſons as ſhall be ſubject to this
" Statute, and againſt all other Perſons
" claiming by or under ſuch Bankrupt, or
" ſuch other Perſons to whom ſuch Diſpoſi-
" tions ſhall be made by the Bankrupt, or
" by his Means or Procurement."

CHAP. XXIII.

The Diſcoverers and Concealers of Bankrupt's Eſtates, how rewarded and puniſhed.

Allowance to Perſons making Diſcovery of Bankrupt's Eſtate. 5 Geo. 2. c. 30. ſect. 20. See ſect. 7. of ſame Stat.

"EVERY Perſon who ſhall (after the "Time allowed for Bankrupts to ſur-render and conform) voluntarily make "Diſcovery of any Part of their Eſtates, "not before come to the Knowledge of "the Aſſignees, ſhall be allowed Five *per* "*Cent.* and ſuch further Reward as the "Aſſignees, and the major Part of the Cre-"ditors, in Value, preſent at any Meeting "of the Creditors, ſhall think fit."

Penalty on Perſons concealing Effects in Truſt. 5 Geo. 2. c. 30. ſect. 21.

"Every Perſon who ſhall have accepted "of any Truſt, and ſhall wilfully conceal "any Eſtate of any Bankrupt, and ſhall "not, within forty-two Days after ſuch "Commiſſion ſhall iſſue, and Notice given "in the *Gazette*, diſcover ſuch Truſt and "Eſtate in Writing to one of the Com-"miſſioners or Aſſignees, and ſubmit to be "examined (if required) ſhall forfeit 100 *l.* "and double the Value of the Eſtate con-"cealed to the Creditors."

Will. Rep. 560, 563.

A Commiſſion being ſued out by the Bankrupt's Father-in-law, to whom the Bankrupt, before ſuing out the Commiſſion, had made over all his Effects except a few Shillings, and ſome deſperate Debts, was held by Lord

Lord C. *Parker*, to have been plainly sued out fraudulently to discharge the Bankrupt.

Ex parte Salkeld.

A Goldsmith being much indebted, shut up his Shop, and having a Stock likewise in Partnership in the Wine Trade, assigned Two-thirds thereof to *J. S.* a Creditor, (who had been particularly assisting to him) without his Knowledge, being worth about 3000*l.* and never after opened his Shop again, but the next Day went off, and was afterwards found to have become Bankrupt such a Day after the Day of the Assignment. On a Bill by *J. S.* against the Assignee, and the Partner in the Wine Trade, the Master of the Rolls held the Assignment good, and held, that there might be just Reason for one becoming Bankrupt to prefer one Creditor to another, as where he was a faithful Friend, or Money lent in Extremity without Profit, and all that such Creditor has to subsist upon; whereas Dealers in Trade may have been Gainers; and that the Time of the Assignment, if made before the Bankruptcy, is not material; but the Justice of the Debt, and its being made without Notice of the Creditor, is no Objection; for this shews, that there was no Fraud or Importunity. And if such Assignment to a single Creditor be a *Chose in Action*, he may apply for Relief here, for he can go no where else; otherwise, if a legal Estate had been conveyed. His *Honour* cited some Precedents, and said, that though preferring some Creditors, in Hopes of after Favours, may be of mischievous Consequence, yet by Reason of

What Assignment of Effects by a Bankrupt is fraudulent. 2 Will. Rep. 427, &c.

of the Precedents he muſt decree in Favour of the Aſſignment. *Small* v. *Oudley.*

Ibid. 431. in A Note added by the Reporter (as it ſeems) at the End of the Caſe, ſays it was ſo ſaid by the Maſter of the Rolls.

If the Aſſignment had been of all his Goods and Effects, or of all his Eſtate, or all his Stock in Trade, as Goldſmith, &c. this had been too general, and would hardly have ſtood; but here it was not of the Trader's own Trade, but of a ſmall Branch of a different Trade, of a Stock in Wine, in all not above 600 *l.* and but Two-thirds of that.

2 Will. Rep. 431.

A Trader, was juſt on the Brink of Bankruptcy; a Deed ready ingroſſed was brought to him, which he executed a little before his Bankruptcy; and in Contemplation thereof, to give a Preference to ſome of his Creditors; cited by the Maſter of the Rolls, as the Caſe of *Jacob* v. *Shepard*, and ſaid, that he doubted thereof; but that on Appeal, Lord *Macclesfield* ordered a Trial, to be informed when the Trader became a Bankrupt; and the Execution of the Deed being found to have been before the Bankruptcy, it was decreed in Favour of the Deed. *Small* v. *Oudley.*

Bond given to Father-in-law of the future Huſband, not to be put in Suit, unleſs Misfortunes happen to Huſband; fraudulent. S. C. C. 46.

Bond was given to the Father-in-law of the future Huſband for 500 *l.* payable at a Day certain, but not to be put in Suit, but for Security of the Daughter, in caſe any Misfortune ſhould happen to the Huſband, to be paid before other Creditors.

Lord Chancellor *King* ſaid, It was a fraudulent Bond on the Face of it, to diſappoint Creditors. *Wiſe*'s Caſe.

CHAP.

CHAP. XXIV.

Of the Diſtribution of the Bankrupt's Effects under joint and ſeparate Commiſſions.

"ANY Creditor may come in within "four Months after the Commiſſion "ſued forth, and until Diſtribution be "made, * ſo that he contributes to the "Charges of the Commiſſion; and if the "Creditors come not within four Months, "the Commiſſioners may proceed to Di-"ſtribution."

When Creditors may come in. 1 Jac. c. 15. ſect 4.

* But now no Contribution is to be paid. 5 Geo. 2. c. 30. ſect. 25.

A Commiſſion of Bankruptcy was taken out againſt *T. F.* the ſeventeenth of *November* 1676; but proſecuted only by *R.* the other Creditors conſenting that Execution of the Commiſſion be forborne a Month; but *R.* proſecuted and ſued *M.* who had poſſeſſed the Eſtate by Aſſignment of the Bankrupt. It was inſiſted at the Trial, that *F.* (the ſuppoſed Bankrupt) was not ſo. *R.* had a Verdict, and the four Months were out; three Weeks after, ſhe petitions to be admitted into the Diſtribution, and now would *contribute to the Charges*, the Suſpenſion of executing the Commiſſion having been ſo ordered by the *Chancellor*; and now his Lordſhip directed her *to be admitted into Contribution*. *Ruſhworth* v. *Forth*.

Diſtribution after four Months. Ch. Caſ. 307.

After

But not to diſturb firſt Diſtribution. 2 Ch. Caſ. 153, 154.

After Diſtribution and four Months, it was admitted *arg.* That other Creditors could not come in to diſturb the firſt Diſtribution, but might come in for the Reſidue, of which no Diſtribution was made. *Harding v. Marſh.*

Hob. 287. Hut. 37, 38.

Upon View of the Statute of 13 *Eliz. c.* 7. and 1 *Ja.* it was reſolved by the Court, That if certain Creditors ſue a Commiſſion, and others within four Months after, or more, being Creditors, come before Diſtribution, and will join *in the Charge of the Commiſſion*, and all that belongs to it, and tender their Parts, that they ſhall not be refuſed, but have their equal Parts as Creditors. But if any Diſtribution be made of any Part of the Eſtate, no Creditors are to be admitted after, that came not in before. *Rugle's* Caſe.

Hut. 37, 38.

The Commiſſioners may ſell and prepare for Diſtribution preſently upon the Execution of the Commiſſion; but until the four Months are paſt they may not proceed to Diſtribution; for the Creditors which inhabit in the remote Parts of the Realm, perhaps, cannot have Notice; and it may be carried ſo ſecretly, that if they might diſtribute preſently, that they which ſued out the Commiſſion, ſhould be only ſatisfied, when, indeed, there was no Default in the others. Alſo it was reſolved, That the Offer of Creditors to be joined, and before they be Partakers, is not an effectual Offer, without offering *to be contributary to the Charges, but to offer any particular Sum is not neceſſary, becauſe they know not what Sum is diſburſed, and that is to be aſſeſſed by the Commiſſioners. And the Words*

(for

(for the Charge of the Commiſſion) is to be extended to all Charges ariſing in ſuing forth the Commiſſion, and in Execution and Defence thereof.

Where there are Lands unſold, and the Commiſſioners make a Diſtribution on a ſuppoſed Value thereof, without having any Money to diſtribute, this was held by the Court to be a good and regular Diſtribution; and the Words of the Act are, "That the "Commiſſioners ſhall have the ordering of "the Bankrupt's Eſtate," ſo that there is no Neceſſity to ſell and diſtribute the Money; but if they allot a Proportion of the Land to each Creditor, it is well enough. *Hitchcox* v. *Sedgwick.* 2 Vern. 158.

Ld. *Hutchins* ſaid, that a fraudulent Diſtribution may be ſet aſide by the *Lord Chancellor*, even upon a Petition, that it had been ſo done in the Lord *Clarendon*'s Time; and in the principal Caſe a new Diſtribution was ordered to be ſold again, and other Creditors not taken in before to have their Proportions. *Hitchcock* v. *Sedgwick.* Ibid. 156, to 162.

"The Commiſſioners are impowered to "examine upon Oath any Perſon for the "Diſcovery of the Certainty of the ſeveral "Debts due to the Creditors; and Creditors "having their Debts ſecured by Judgments, "Statutes, or other Specialties, with or "without Penalty, or having made At"tachments in *London*, &c. where there is "no Execution or Extent ſerved or executed "before the Perſon became Bankrupt, ſhall "not be relieved for more than a rateable "Part of their juſt Debts, without Reſpect

Bankrupt's Goods ſhall be rateably divided, notwithſtanding any Judgment, Recognizance, &c. 21 Jac. c. 19. ſect. 9.

"to

"to any Penalty contained in ſuch Judg-
"ment, Statute, or other Penalty."

Bac. Abr. 258. in Notes.

Creditors, upon what Security ſoever they be, come in all equal, unleſs ſuch as have obtained actual Execution before the Bankruptcy, or had taken Pledges for their juſt Debts; and the Reaſon is, becauſe, from the Act of Bankruptcy, all the Bankrupt's Eſtate is veſted in the Commiſſioners, who are eſtabliſhed as Courts of Juſtice touching the Bankrupt's Eſtate, and before whom the Creditors muſt authenticate their Debts, in order to receive their Dividends; and therefore they muſt equally admit all Perſons to make Proof of their Debts; but ſuch as have Pawns or Mortgages have a Property in the Thing ſo pledged, (*a*) precedent to the Tranſlation of the Property to the Commiſſioners, in which Caſe they have only an Equity of Redemption, and are in no better Condition than the Bankrupt himſelf; that the Bankrupt, before the Aſſignment of the Commiſſioners, has ſuch a Property as will maintain an Action for the Recovery of the Goods. See *Salk.* 108.

(*a*) If they are made before the Act of Bankruptcy committed, for otherwiſe, the Aſſignment will over-reach them. 2 Barnard. K. B. 343.

One ſeiſed of Lands in Fee owes a Debt by Statute, and afterwards becomes a Bankrupt, and the Creditor by Statute extends the Lands, then a Commiſſion of Bankruptcy is iſſued out. Upon a Reference by the Lord Chancellor *Cowper*, to the Judges of *C. B.* they held, that the Clauſe of the Statute was full and plain, that all the Creditors of the Bankrupt, unleſs where there was a Mortgage, ſhould be equally paid. Sir *Geo. Newland* and *Beckley* v. [illegible].

Creditors ſhall be equally paid. Will. Rep. 92, 93.

And

And *Trevor*, Ch. J. ſaid, a Judgment or Recognizance did no more bind the Lands, than the *Teſte* of a *Fi. Fa.* bound the Goods, at the Time of the making of this * Statute; and it was plain, if the *Fi. Fa.* was not ſerved and executed, ſuch Creditor, notwithſtanding his ſuing out his *Fi. Fa.* ſhould come in only in Proportion with the Creditors, even by a Simple Contract. Same Caſe. Ibid. 93. * 29 Car. 2. c. 3.

A. mortgaged Lands, and afterwards became a Bankrupt. The Title of the Mortgagee is not to be impeached by the Statute; and the Mortgagee being a Creditor likewiſe by Bond, was decreed to come in, *he paying his Contribution Money. Tanner* v. *Chapman, & al'.* Fin. Rep. 466.

If one quits his Trade, and a Commiſſion of Bankruptcy is afterwards ſued out againſt him by his old Creditors, yet an after Creditor ſhall be admitted to have his Share in the Bankrupt's Eſtate. *Meggot* v. *Mills.* Ld. Raym. Rep. 287.

Bill againſt the Commiſſioners and Aſſignees of a Statute of Bankruptcy to be let into the Statute, *paying Contribution Money*, and decreed accordingly; the Plaintiff likewiſe accounting for what Eſtate of the Bankrupt came to the Hands of the Plaintiff's Father, and repaying Money, which himſelf had recovered at Law. *Vanaker* v. *Naſh & al'.* Fin. Rep. 60.

Creditors excluded, were let in for their Shares according to a prior Agreement, tho' an Aſſignment and Dividend had been made of the Eſtate. *Ebſworth* and *Manſell* v. *Kent & al'.* Ibid. 326.

A. being

Wife's Executor intitled to Diſtribution. 2 Vern. 707.

A. being indebted to a Feme Covert, becomes a Bankrupt, the Huſband *pays the Contribution Money*, and dies before Diſtribution, and then the Wife died. The Executors of the Wife are intitled to the Dividend; for the Huſband paying the Contribution Money, does not alter the Property of the Debt. *Anon.*

2 Will. Rep. 89.

A. drew a Bill of Exchange for 100 *l.* on *B.* in *Holland*, payable to *C.* which *B.* accepted, and afterwards *A.* and *B.* became Bankrupts, and *C.* received 40 *l.* of the 100 *l.* out of *B.*'s Effects. Ld. C. *Macclesfield* directed, that the Creditors of *A.* ſhould come in for the 60 *l.* Reſidue of the 100 *l.* and that if the 40 *l.* paid to *C.* ſhall appear to have been paid out of *B.*'s own Effects, then the Creditors of *A.* ſhall come in for the whole 100 *l.* out of which they muſt anſwer the other 40 *l.* to the Creditors of *B.* that being to be taken by *A.*'s Creditors in ſuch Caſe only as Truſtees for *B.*'s Creditors. *Ex parte Ryſwicke.*

Ibid. 407.

A. gives a Promiſſory Note for 200 *l.* payable to *B.* or Order, indorſes it to *C.* who indorſes it to *D.* *A.* *B.* and *C.* become Bankrupts, and *D.* receives 5 *s.* in the Pound on a Dividend made by the Aſſignees againſt *A.* *D.* ſhall come in as a Creditor for 150 *l.* only out of *B.*'s Effects; and if *D.* *paid Contribution Money* for more than 150 *l.* it ſhall be returned. *Ex parte Lefebure.*

7 Vin. Abr. 101. pl. 12.

Upon Petition to Ld. Chan. *Hardwicke*, the Caſe was, *Hugh Payne* and *Deborah Bullock*, *May* 1716, gave Bond to *Mary Tirrel* for Payment of 120 *l.* In 1727, *Mary Tirrel* aſſigned

a Bond to *Rachel* her Daughter, the Petitioner; *Hugh Payne* and *Deborah Bullock* both died, *Hugh Payne* died inſolvent, *Deborah Bullock* left a conſiderable real Eſtate, which devolved to *Hugh Payne* her Grandſon; *Hugh Payne* the Grandſon entered, and ſold Part of the Lands, and after became a Bankrupt; his Aſſignees were in Poſſeſſion of the Lands that were *Deborah Bullock*'s, unſold by *Hugh Payne* the Grandſon; Petitioners therefore prayed that thoſe Lands in the Hands of the Aſſignees might be liable to the Bond Debt of *Deborah*, preferable to the general Creditors of *Hugh Payne* the Grandſon. It was inſiſted for the Petitioner, that ſince the Stat. 3 & 4 *W.* & *M.* *c.* 14. "of fraudulent Deviſes", Lands in Hands of Deviſees are made liable to Bond Debts, as in the Hands of the Heir, and here the Aſſignees ſtand in the Place of the Bankrupt, and ſubject to the ſame Equity, and the Bankruptcy and Aſſignment is no Alienation *bona fide* within the Exception and Intention of the Statute; and the Caſe of Executors becoming Bankrupts, having Aſſets remaining *in Specie*, is common, and always held the Creditors of Teſtator to have a Preference; but it was inſiſted *econtra*, that there is no Specifick Lien; the Aſſignment is an Alienation, and the Caſe of Executors differs; Executor is looked upon as a Truſtee. *Lord Chancellor* ſaid, This is a Point of too much Difficulty to determine in this ſummary Way; let the Petitioner bring Bill by *Eaſter* Term, and ſtay ſufficient of the Eſtate in the mean Time in the Aſſignees Hands. *Ex parte Warren & Ux'.*

7 Vin. Abr. 102. pl. 13.

Upcot, a Merchant, mortgaged Lands to *W.* for 1157*l.* and afterwards mortgaged the ſame together with other Lands to *Holwell*, as a Collateral Security for 500*l.* due by the ſaid *U.* to *H.* by Bond, and about ten Days afterwards *U.* was declared a Bankrupt; Part of the Premiſſes were ſold for 1050*l.* and the Money paid to *W.* but the Commiſſioners refuſing to ſell the Reſidue, and the Aſſignees refuſing to ſatisfy the Demand of *H.* or to admit him to have any Share of the Bankrupt's Eſtate, he petitioned for a Sale to be made of the reſt of the mortgaged Premiſſes, and the Money to be applied towards the Diſcharge of the Demands of *W.* and himſelf; and in caſe of any Deficiency, then to be admitted a Creditor on the ſaid Bankrupt's Eſtate, for what ſhould remain due after ſuch Sale and Application as aforeſaid, and to ſtay any Dividend in the mean Time. Whereupon the Ld. Chan. *Hardwicke*, upon hearing Counſel, referred it to the Commiſſioners to take an Account of what was due to *W.* and *H.* reſpectively, for Principal and Intereſt on their reſpective Mortgages, and ordered, that ſo much of the ſaid mortgaged Premiſſes as remained unſold, to be ſold to the beſt Bidder, and the Monies ariſing to be applied to the Diſcharge of all Principal and Intereſt due to the ſaid *W.* in the firſt Place, and then of the ſaid *H.* together with his Coſts of Application, by Petition to this Court to be ſettled by the ſaid Commiſſioners; and in caſe the Petitioner and Aſſignees ſhould differ about the ſame, and if the ſame ſhould not prove ſufficient to pay the Petitioner his

Principal, Intereſt and Coſts as aforeſaid; then the Petitioner to be admitted a Creditor for ſuch Deficiency, and be admitted to a Dividend, *&c.* for the ſame; and that the ſaid *W.* and *H.* be examined touching the Account, and to produce upon Oath all Deeds, Books of Account, and Vouchers, *&c.* upon the Petition of *William Hollwell*, of *Exeter*, Eſq;

Joint Debts are to be paid out of the joint Stock firſt; and if there be an Overplus, then that ought to be applied to pay particular Debts of each Partner; but if there be not enough to pay all the joint Debts; and if either of the Partners ſhall pay more than a Moiety of the joint Debts, then ſuch Partner is to come in before the Commiſſioners of Bankrupts, and be admitted as a Creditor for what he ſhall ſo pay over and above his Moiety. Earl of *Craven & al'* v. *Knight & al'*. Diſtribution under joint Commiſſions. 2 Ch. Rep. 226.

If there be ſeveral joint Traders, Payment to one of them is Payment to all; ſo if they all, except him to whom the Payment was made, were Bankrupts, the Payment is only unavoidable as to his Proportion. *Anon.* 12 Mod. 447. *Coram* Holt, Ch. J. at *Niſi Prius*.

And if there be four Partners, whereof three are Bankrupts, and their Shares aſſigned, and a Payment was made to him that was no Bankrupt, it is a Payment to all the Aſſignees, for now they are all Partners. Ibid.

On a joint Commiſſion of Bankruptcy againſt two Traders, ſeparate Creditors are allowed to come in, for the joint Effects are to be applied, firſt to pay the Partnerſhip Debts, and then the ſeparate Debts; and the 2 Vern. 706. Will. Rep. 326.

ſeparate Effects to pay firſt the ſeparate Creditors, and afterwards the Partnerſhip Creditors. *Per Cowper*, Chan. *Crowder*'s Caſe, † *Ex parte Cooke*. § *Horſey*'s Caſe.

† By Ld Ch. *King*. 2 Will. Rep. 500.
§ 3 Will. Rep. 25.

2 Ch. Caſ. 139. A Quere is added how the ſeparate Creditors could have other Title than thoſe under whom they claim?

Two Partners in Trade put in each an equal Stock, and agreed by Covenant, that the Stock ſhould pay the Debts of the Stock, and neither of their ſeparate Debts ſhould charge the Stock, but only his own Eſtate, or to that Effect; they both became Bankrupts, and a Commiſſion iſſued againſt them both; one of them owed ſeparately more than the other; the Queſtion was between the ſeparate Creditors of each Bankrupt, and the Creditors on Account of the joint Stock, for theſe would exclude the ſeparate Creditors from charging the joint Stock, but that it ſhould ſatisfy the Stock Debts; but the Lord *North* was of a contrary Opinion, for the Covenant of the Partners cannot bind any of the Creditors, but only themſelves. L.d. *Craven* v. *Widdows*.

2 Vern. 293.

R. S. and *G.* were Partners together in the Trade of a Dry Salter: *G.* embezzles and waſtes the joint Stock, contracts private Debts, and becomes a Bankrupt; the Commiſſioners aſſign the Goods in Partnerſhip. Bill by *R.* the Plaintiff for an Account, and to have the Goods ſold to the beſt Advantage, and inſiſted, that out of the Produce of the Goods, the Debts owing by the joint Trade ought to be paid in the firſt Place, and that out of *G.*'s Share, Satisfaction muſt be

be made for what *G.* had waſted or embezzled; that the Aſſignees could be in no better a Caſe than the Bankrupt himſelf, and were intitled only to what his third Part would amount unto, clear after Debts paid and Deductions for his Embezzlement, and the Court ſeemed to be of that Opinion, but ſent it to a Maſter to take the Account and ſtate the Caſe. *Richardſon* v. *Goodwin & al'*.

If one or more of the joint Traders become Bankrupt, his or their Proportions only are aſſignable by the Commiſſioners to be held in common with the reſt, who were not Bankrupts. At *Niſi Prius* before *Holt*. *Anon.* 12 Mod. 446.

Trover for three Bank Notes, which were payable to *A.* and co. and upon the Trial it was objected, that the ſole Intereſt of theſe Notes was not in *A.* alone, *&c.* and that *A.* had once a Partner, one *J.* who died before the Drawing of theſe Notes, and ſo his Executors, having not renounced the Partnerſhip, were ſtill intereſted in all Things relating to their Trade; and *J. Powell* held, that this was true enough, for *Prima Facie*, the Executors of *J.* ſhall be taken to continue in the Partnerſhip until they renounce it, and no Renunciation being made out in this Caſe; but ſome of the Executors having proved the Will, they were intereſted in theſe Notes too, though they never acted in the Trade. *Per Powell*, J. *Somerſet* Aſſizes, 5 *Ann.* in *Arthur*'s Caſe. 7 Vin. Abr. 103. pl. 5.

If a joint Commiſſion of Bankruptcy iſſues out againſt two joint Traders, it was queſtioned, if ſeparate Creditors might come in under joint Com- Whether ſeparate Creditors may come in under a

miſſion, Fitzgib. 281. Barnard. K.B. 469. S. C. but not S. P.

under it; and that they may, it was argued, that if there are two joint Traders, and one becomes Bankrupt one Day, and the other the next Day, and a joint Commiſſion is taken out, different Relations muſt be had under a joint Commiſſion with Regard to the different Times of the Bankruptcy; and the Diſtribution under it muſt be the ſame, as if ſeparate Commiſſions had been taken out; for in both Caſes the joint Fund is primarily applied to the joint Debts, and the ſeparate Fund to the ſeparate Debts, and then in Average to the joint Debts, and *vice verſa*; ſo are the Orders in the Court of *Chancery* in the following Inſtances, *viz.* *A.* and *B.* were Partners, but the Partnerſhip being diſſolved, and *A.* ſetting up for himſelf, became Bankrupt, and a Commiſſion iſſued out againſt him; the joint Creditors were admitted to prove their joint Debts under the ſeparate Commiſſion, and cites 22 *Jan.* 1738, the Caſe of *Stephens* v. *Brown* and *Adland*. ——— That 22 *April* 1729, it was ordered, that the joint Eſtate ſhould go to the joint Creditors, and the remaining Part of the joint Eſtate, which reſpectively belonged to each, ſhould go to their ſeparate Creditors upon a joint Commiſſion ſued out againſt the then Defendants, and cited *Horſey* v. *Heyham* and *Heyham*. And that 2 *Geo.* 2. in *C. B.* two being joint Obligors, and afterwards Bankrupts, ſeparate Commiſſions were taken out againſt them, and the ſeparate Commiſſioners refuſing to let in the Obligee, he brought an Action againſt one of the Obligors; but the Defendant having got a Certificate

cate under the ſeparate Commiſſion, was diſcharged. *Mathews* v. *Aland*; which proves that joint Creditors may come in under ſeparate Commiſſions; and by the ſame Reaſon, ſeparate Creditors may come in under a joint Commiſſion, and the Law being ſo, every Aſſignee may recover by ſetting forth the ſpecial Matter; and beſides, if the Aſſignee of the other Part will not join, he may be ſummoned and ſevered; and the Court thought the laſt Caſe cited came fully to the Point of the Principal Caſe, and therefore inclined to give Judgment accordingly. *Sed adjornatur*, *Grace* v. *Heyham*.

CHAP. XXV.

How far any future Estate or Effects, coming to a Bankrupt after his Bankruptcy, shall be liable to the Commission.

Lands, &c. extendable, which are purchased, or do descend to a Bankrupt. 13 Eliz. c. 7. sect. 11.

"IF any Person declared a Bankrupt by "virtue of this Act, shall at any Time "after purchase Lands or Chattels, or any "Lands or Chattels shall descend or come "to such Bankrupts before their Debts shall "be fully satisfied or agreed for, the said "Lands and Chattels shall, by the Commis-"sioners, be bargained, sold, extended, de-"livered and used, for Payment of the said "Creditors, in like Manner as other the "Lands and Chattels of the said Bank-"rupts."

In what Cases Bankrupts future Effects shall be liable to Creditors. 5 Geo. 2. c. 30. sect. 9.

"In Case any Commission of Bankruptcy "shall issue against any Person, who, after "the twenty-fourth Day of *June* 1732, shall "have been discharged by virtue of this Act, "or shall have compounded with his Credi-"tors, or delivered to them his Estate or "Effects, and been released by them, or "discharged by any Act for the Relief of "Insolvent Debtors, after the Time afore-"said, the Body of such Person conforming

"as

" as aforeſaid, ſhall be free from Arreſt and " Impriſonment by virtue of this Act; but " his future Eſtate and Effects ſhall remain " liable to his Creditors as before the making " of this Act (his Tools of Trade, neceſſary " Houſhold Goods and Furniture, and his " neceſſary Wearing Apparel, and of his " Wife and Children only excepted) unleſs " his Eſtate ſhall produce clear, after all " Charges, ſufficient to pay every of his Cre- " ditors 15*s.* in the Pound for their reſpec- " tive Debts.

Upon Motion for a new Trial, the Court held, That though under the ſaid Statute, the future Effects of a Bankrupt againſt whom two Commiſſions had iſſued, were liable to be ſeiſed for the Benefit of Creditors; yet the Bankrupt had in the mean Time ſuch a Property in them, as enabled him to tranſact and ſell to a *bona fide* Purchaſer. *Aſhley* v. *Kell.*

Future Effects of a ſecond Bankrupt, continues his Property till ſeiſed.
2 Stra. 1207.

On 17th *May* 1735, a Commiſſion of Bankruptcy iſſued againſt the ſaid *William Kell*, by the Deſcription of *William Kell*, late of *London*, Merchant, and he was duly found a Bankrupt, and ſubmitted to the Statutes, and finiſhed his laſt Examination, but never obtained his Certificate under ſuch Commiſſion. Dav. 515.

Afterwards *Kell* ſet up the Trade of a Diſtiller, at a Place called *Brayewicke*, near *Maidenhead* in *Berkſhire*, and *Aſhley* having contracted an Acquaintance with *Kell*, on the firſt of *Auguſt* 1741, he entered into Copartnerſhip with *Kell*, to carry on the Trade of diſtilling and rectifying Molaſſes Spirits for the Space of five Years, or thereabouts; and during

during this Copartnerſhip, *Aſhley* took off all or moſt of the Spirits which *Kell* diſtilled.

Afterwards ſome Diſputes ariſing between *Aſhley* and *Kell*, and *Kell* being Debtor to *Aſhley* on a ſeparate Account (excluſive of the Copartnerſhip) *Aſhley* on the ſecond of *July* 1742, took out a ſecond Commiſſion againſt *Kell*, and was choſe ſole Aſſignee of his Eſtate and Effects; but *Kell* having in all Reſpects ſubmitted to the Statutes relating to Bankrupts, *Aſhley* and the reſt of *Kell*'s Creditors ſigned his Certificate under the ſecond Commiſſion, which was duly confirmed and inrolled; and *Aſhley* ſold back to *Kell* ſeveral Parcels of his Houſhold Goods, and Part of his Stock in Trade as a Diſtiller; for Part of which Goods *Kell* paid *Aſhley* in Money, and for the Remainder, amounting in Value to the Sum of 100 *l.* or thereabouts, *Kell* gave *Aſhley* a Bond for 100 *l.* dated the twenty-eighth Day of *October* 1742, payable with Intereſt in ſix Months, at 5 *l. per Cent.* and *Aſhley* promiſed to deal with *Kell* afterwards.

Then *Kell* ſet up again the Trade of a Diſtiller on his own Account, and *Aſhley* dealt with him, and paid him for two Parcels of Spirits, after the Rate of four Shillings *per* Gallon, to the Amount of the Sum of 88 *l.* 16 *s.*

On the fourth and twenty-eighth Days of *April* 1743, *Kell* ſent *Aſhley* two other Parcels of Spirits, at the ſame Price, amounting to 184 *l.* 4 *s.* and *Kell*'s Bond of 100 *l.* being then due to *Aſhley*, and *Kell* not being willing that his Bond ſhould be out againſt him, he

deſired

deſired *Aſhley* to pay himſelf out of the Goods, the Bond and Intereſt due to him, and only give him the Balance for the Spirits.

But inſtead of ſo doing, *Aſhley* in *Eaſter* Term 1743, brings an Action againſt *Kell* for the 100*l.* and Intereſt due on the Bond, and holds *Kell* to Bail, and at the ſame Time, by the Meſſenger under the Commiſſion, ſeizes the Spirits, amounting to 184*l.* 4*s.* as Aſſignee under the ſecond Commiſſion, and he inſiſted to retain the ſame, in Truſt for himſelf and the other Creditors of *Kell* under the ſecond Commiſſion.

Aſhley proceeded in his Action, and *Kell*, by way of Set-off to the Debt, pleaded, That before the bringing of this Action, *Aſhley* was indebted to him in a much larger Sum (to wit) in 184*l.* 4*s.* for Goods ſold and delivered, out of which Sum *Kell* was willing to allow the Principal and Intereſt due to *Aſhley* on his Bond; and upon this Iſſue was joined.

Pending this Action, *Kell* filed a Bill in *Chancery* againſt *Aſhley*, and prayed that *Aſhley* might diſcover whether he had not agreed to purchaſe ſuch Goods of him, and if ſuch Goods did not come to his Poſſeſſion; and to be relieved in ſeveral other Matters complained of in ſuch Bill, and that *Aſhley* might be injoined from Proceeding in ſuch Action.

To this Bill *Aſhley* put in his Anſwer, in which he denied the Spirits were ever ſold to him, or that he ever promiſed to pay for them; and he inſiſted upon his Right of retaining

taining them, as Aſſignee under the ſecond Commiſſion, by virtue of the above mentioned Statute; *Kell*'s Effects under the ſecond Commiſſion not amounting to pay 15*s.* in the Pound; but whether ſuch Goods were or were not rightfully ſeized, he was adviſed, was a Matter ought to be tried at Law, where *Kell* (if at all) had his Remedy; and the Court did not think proper to grant an Injunction, but ſent the Parties to Law; and then *Aſhley* proceeded in the Cauſe.

And on thirtieth *November* 1743, the Cauſe was tried before the Lord Chief Juſtice *Lee* at *Guildhall*, *London*.

Upon the Argument of the Caſe, it was inſiſted by the Gentlemen who were Counſel for *Aſhley*, that theſe Goods were not the Property of *Kell*, and therefore he could not ſell them; but that they came to *Aſhley* as Truſtee under the ſecond Commiſſion.

That this was the firſt Inſtance of a Bankrupt coming in this Manner againſt his Aſſignee, and the common Way was to bring an Action of *Trover* for the Goods; and the Queſtion then would be, Where the Property lay?

That *Aſhley* had the Spirits, but not as a Buyer; and that by the above Statute, *Kell*'s future Effects were liable, he not having paid 15*s.* in the Pound; and conſequently, that the Goods belonged to the Aſſignee either under the firſt or ſecond Commiſſion.

But by the Gentlemen who were Counſel for *Kell*, it was inſiſted, That *Kell* was never diſcharged by the ſaid Statute after the twenty-

twenty-fourth of *June* 1732, except by the laſt Commiſſion, and therefore could not poſſibly be within the Intent of that Statute, having but once had the Benefit of it.

That ſuppoſing *Kell*'s future Effects had been liable to his Creditors by the above Statute, that *Aſhley* could not in any Manner ſeize them as Aſſignee under the ſecond Commiſſion; and if he had a Right, he muſt have proceeded in a legal Way, and have brought his Action againſt *Kell*, and then *Kell* muſt have pleaded his Certificate in diſcharge of his Perſon, and let *Aſhley* have taken Judgment againſt his Goods, as in the Caſe of an Inſolvent Debtor; but that this was by no Means *Kell*'s Caſe, he not being within the Meaning of the Statute, as having but once had Relief.

And his Lordſhip, after having with great Judgment ſtated the Caſe (and ſummed up the Evidence) to the Jury, was clearly of the ſame Opinion with the Gentlemen who were Counſel for *Kell*, that *Kell*'s Caſe was not within the Intent and Meaning of the above Statute, and that the taking of the Goods by *Aſhley*, as Aſſignee, was illegal, and the Jury concurring with his Lordſhip, found the Plea of the Defendant *Kell* to be true, as was alledged, and therefore gave a Verdict for him.

But the Lord Chief Juſtice gave *Aſhley* Leave to move, if he thought proper, in Arreſt of Judgment within ſix Days of *Hilary* Term then next; and *Aſhley* not moving in Arreſt of Judgment in all *Hilary* Term, the Lord Chief Juſtice ordered the *Poſtea* to be de-

delivered to the Defendant *Kell*'s Attorney, who thereupon taxed the Coſts at 30 *l.* and took out Execution againſt *Aſhley* for ſuch Coſts, which *Aſhley* paid *Kell*'s Attorney.

And after *Aſhley* had paid *Kell*'s Coſts, in *Eaſter* Term following, *Aſhley* moved in Arreſt of Judgment, and a Rule was made for *Kell*'s Attorney to attend with the *Poſtea*.

And upon the Argument of this Caſe, before the Court of *King's Bench*, the very ſame Arguments were made uſe of by the Gentlemen who were Counſel for the Plaintiff and Defendant, as were made uſe of at the Trial of the Cauſe; but the whole Court were alſo of Opinion, that the Verdict was Right, and intirely concurred with the Lord Chief Juſtice *Lee* in his Judgment; and therefore they diſcharged the Plaintiff's Rule.

And in *Trinity* Term following *Kell* brought an Action in the Court of *Common Pleas*, againſt *Aſhley*, for the Balance of the Sum of 184 *l.* 4 *s.* due for the Spirits.

And on the twenty-third Day of *June* following, this Cauſe was tried at *Guildhall*, *London*, before the Lord Chief Juſtice *Willes*, where the ſame Arguments were alſo made uſe of on both Sides, as were inſiſted on before the Lord Chief Juſtice *Lee* at the firſt Trial, and before the Court of *King's Bench*, on the ſpecial Argument of this Caſe; but the Lord Chief Juſtice *Willes*, upon the ſtating the Caſe, and fully ſumming up the Evidence to the Jury, was clearly of the ſame Opinion with the Lord Chief Juſtice *Lee* and the Court of *King's Bench*, and was pleaſed to make this Obſervation, *viz.* That by

by that Statute, the Effects of a Bankrupt that had received the Benefit of it, remained liable to his or her Creditors, as before the making of the Act; but that it could never be ſuppoſed, that they were liable to be ſeized in a ſummary Way, without a legal Trial, by an Aſſignee, becauſe nothing was veſted in the Aſſignee, but what the Bankrupt had before he was a Bankrupt, and *Kell* had not received the Benefit of the Act.

And the Jury being of the ſame Opinion, they therefore gave a Verdict in this Action for the Plaintiff *Kell*, for 54*l.* 18*s.* beſides Coſts of Suit; being what was proved to be the Value of the Spirits, after ſome Allowances were made for Waſte and Leakage, and after the Bond of 100*l.* and Intereſt, was paid by *Kell* to *Aſhley*. *Aſhley* v. *Kell*.

CHAP.

CHAP. XXVI.

Of Judges and Juſtices of the Peace, their Power and Duty concerning Bankrupts.

Judges or Juſtices ſhall grant Warrant to apprehend Bankrupts not conforming. 5 Geo. 2. c. 30. ſect. 14.

"UPON Certificate under the Hands and Seals of the Commiſſioners, that a Commiſſion is iſſued, and the Perſon proved before them to become Bankrupt, the Juſtices of the Courts of *King's Bench* or *Common Pleas*, or Barons of the *Exchequer*, and all and every the Juſtices of the Peace within *England*, the Dominion of *Wales*, and Town of *Berwick* upon *Tweed*, ſhall, upon Application to them made, grant his Warrant under his Hand and Seal, for apprehending the Bankrupt, and ſhall commit him to the Common Gaol of the County where he ſhall be apprehended, there to remain until removed by Order of the Commiſſioners, by Warrant under their Hands and Seals."

The Judge may recommit the Priſoner, on bringing his *Habeas Corpus*. 5 Geo. 2. c. 30. ſect. 18.

"In Caſe any Perſon committed by the Commiſſioners Warrant, by virtue of this or any other Statute now in Force concerning Bankrupts, ſhall bring any *Habeas Corpus* in order to be diſcharged from any ſuch Commitment, and on the Return thereof there ſhall appear any Inſufficiency whatſoever,

" whatſoever, in the Form of the Warrant " whereby ſuch Perſon was committed, by " reaſon whereof the Party might be diſ- " charged of ſuch Commitment, the Court " or Judge before whom the Party ſhall be " ſo brought by *Habeas Corpus*, ſhall by " Rule, Order, or Warrant, commit him to " the ſame Priſon, there to remain until he " conform, unleſs it ſhall be made appear to " the Court or Judge, by the Party com- " mitted, that he has fully anſwered all " lawful Queſtions put to him by the Com- " miſſioners; or in caſe he was committed " for not ſigning his Examination, unleſs it " appear to the Court or Judge, that he " had a good and ſufficient Reaſon for re- " fuſing to ſign the ſame."

CHAP. XXVII.

Of the Gaolers Duty concerning Witneſſes and Bankrupt Priſoners, and of the Remedy againſt them to whoſe Cuſtody ſuch Priſoners being committed are ſuffered to Eſcape, or refuſe to be ſhewn upon Requeſt.

Action of Eſcape lies againſt Sheriff, for letting a Bankrupt go at large. Mo. 834, 835. (*a*) Rol Rep. 47. 2 Bulſtr. 236.

THE Commiſſioners upon the Statute of Bankrupts committed the Bankrupt to the Cuſtody of the Sheriff of *B.* for refuſing to be examined on Interrogatories. The Sheriffs let the Bankrupt go out at large, and Action of Eſcape lies againſt them. The Sheriff of *Briſtol*'s Caſe, (*a*) *Barnes* v. *Cary*.

Gaolers to receive Bankrupts committed to their Cuſtody, and to give immediate Notice thereof to the Commiſſioners.

"The Gaoler or Keeper, to whoſe Cuſtody "any Bankrupt ſhall be committed by vir- "tue of this Act, is hereby required to take "and receive ſuch Perſon into his Cuſtody, "and forthwith to give Notice to the Com- "miſſioners of ſuch Perſon's being in his "Cuſtody, to the Intent the Commiſſioners "may ſend their Warrant to ſuch Gaoler or "Keeper,

" Keeper, for delivering ſuch Bankrupt to " the Perſon named in ſuch Warrant, who " ſhall be thereby authorized to convey and " bring ſuch Perſon to the Commiſſioners, " in order for his Examination and Diſ- " covery." 5 Geo. 2 c. 30. ſect. 14.

" If any Gaoler to whom any ſuch Bankrupt " or Perſon ſhall be committed, as aforeſaid, " ſhall wilfully ſuffer ſuch Bankrupt or Per- " ſon to eſcape from ſuch Priſon, or to go " without the Walls or Doors of the ſaid " Priſon, until he ſhall be duly diſcharged, " ſuch Gaoler ſhall for ſuch his Offence, " being duly convicted by Indictment or " Information, forfeit five hundred Pounds " of lawful Money of *Great Britain*, for the " Uſe of the Creditors of ſuch Bankrupt." Gaoler ſuffering Bankrupt, &c. to eſcape, forfeits 500 l. 5 Geo. 2. c. 30. ſect. 18.

" The Gaoler ſhall, upon Requeſt of any " Creditor having proved his Debt, and " producing a Certificate thereof under the " Hands of the Commiſſioners (which the " Commiſſioners are to give *gratis*) produce " ſuch Perſon ſo committed, and in caſe " ſuch Gaoler ſhall refuſe to ſhew ſuch Per- " ſon ſo committed, and being in his actual " Cuſtody at the Time of ſuch Requeſt, to " ſuch Creditor requeſting to ſee ſuch Per- " ſon, ſuch Gaoler ſhall forfeit 100 *l.* for the " Uſe of the Creditors, to be recovered by " Action of Debt, in the Name of the " Creditors requeſting ſuch Sight." Penalty on him refuſing to produce his Priſoner. 5 Geo. 2. c. 30. ſect. 19.

CHAP. XXVIII.

Of Evidence and Pleading.

What is legal Evidence before the Commissioners.

THE same legal Proof of the petitioning Creditor's Debt, of the Trading, and Act of Bankruptcy, is required before the Commissioners, as on an Issue at Law, Bankrupt or not Bankrupt; yet there was a Case in which the petitioning Creditor only proved the Act of Bankruptcy; however, had it been contested, there is no Doubt but it would have been held an illegal one, and therefore the Name of it is purposely omitted.

What necessary to be proved on a Trial. How to prove them, see 5 Geo. 2 c. 30. sect. 41. hereafter.

In the Trial of every Cause, great Care must be taken to prove these four Things, *viz.* The Commission under the Great Seal; the Act of Bankruptcy; the Petitioning Creditor's Debt; and the Assignment to the Assignees; for if you fail in either of these Points, you will be nonsuited.

Debtor good Witness, but Creditor not.

A Debtor may be an Evidence, but a Creditor cannot.

Creditor of a Bankrupt no Witness to prove him a Gamester. Stra. 507.

By the Bankruptcy Act it is provided, That if the Bankrupt has within one Year before lost 5*l.* in one Day at Gaming, he shall not have his Certificate, nor the usual Allowance; and upon an Issue out of *Chancery*, to try the Point of Gaming, a Creditor of the Bankrupt was called to prove the Gaming; but the Chief Justice would not allow him to be a Witness, because he would be

be intitled to a Share out of the uſual Allowance to the Bankrupt, which if he has not by having forfeited it on Account of Gaming, the Dividend to the Creditors will be the larger. *Shuttleworth* v. *Bravo.*

Of the Proceedings under the Commiſſion.

It is not neceſſary to prove that the Perſon, upon whoſe Petition the Commiſſion was granted, was a Creditor of the Bankrupt; becauſe upon View of the Statutes, they do not require it; nor that the Bankrupt was indebted 100 *l.* though the Practice has been to do ſo; becauſe, though the *Chancellor* frequently, before he grants a Commiſſion of Bankruptcy, requires *ſuch Proof*, yet it *is only Matter of Diſcretion* in him. *Smith* v. *Blackham.*

Ld. Raym. 724.

But ſee 5 Geo. 2. c. 30. ſect. 23.

Of what Bankrupt's Certificate is Evidence.

5 Geo. 2. c. 30. ſect. 7.

" The Certificate of Bankrupt's conforming, and the Allowance thereof according " to the Directions of this Act, ſhall be ſufficient Evidence of the Trading, Bankruptcy, Commiſſion, and other Proceedings precedent to the obtaining ſuch Certificate, unleſs it was obtained unfairly and " by Fraud, or unleſs there appears any Concealment by the Bankrupt to the Value of " 10 *l.*"

Certificates, &c. to be entered of Record, and Copies given in Evidence.

5 Geo. 2. c. 30. ſect. 41.

" Upon Petition of any Perſon, the *Lord* " *Chancellor* may order the Commiſſions, " Depoſitions, Proceedings and Certificates, " to be entered of Record; and in caſe of " the Death of the Witneſſes proving ſuch " Bankruptcy, or in caſe the ſaid Commiſſions, or other Things ſhall be loſt, a " Copy of the Record of ſuch Commiſſions, or other Things ſigned and atteſted " as herein is mentioned, may be given in

" Evidence to prove ſuch Commiſſions and " Bankruptcy or other Things; and all Cer- " tificates which have been allowed, or to " be allowed and entered of Record, or a " true Copy of every Certificate, ſigned and " atteſted by the Clerk of the Inrolments, " ſhall and may be given in Evidence in any " Courts of Record, and, without further " Proof, taken to be a Bar and Diſcharge " againſt any Action for any Debt contracted " before the Iſſuing of ſuch Commiſſion, " unleſs any Creditor of the Perſon that has " ſuch Certificate, ſhall prove that ſuch Cer- " tificate was fraudulently obtained."

Bankrupt's Wife cannot be examined touching her Huſband's Bankruptcy. Will. Rep. 610, 611.

The Wife of a Bankrupt cannot be examined againſt her Huſband *touching his Bankruptcy*; for though the former Statute of 21 *Jac. c.* 19. authoriſes the Commiſſioners to examine the Wife *touching any Concealment of his Goods, &c.* yet neither that, or the late Statute of * 5 *Geo. c.* 24. extends to examine the Wife *touching the Bankruptcy, or whether he had committed any Act of Bankruptcy, and how and when he became a Bankrupt*; and if they commit her, and the Warrant of Commitment mentions it to be as well for refuſing to diſcover the Goods, &c. of a Bankrupt, as the Time and Manner of his Bankruptcy, yet the Commitment was held illegal, and ſhe ordered to be diſcharged. *Ex parte James.*

* Now expired, *Cay.*

Bankrupt cannot prove his own Act of Bankruptcy. 2 Stra. 829.

It was held in this Caſe, that no Releaſe could make the Bankrupt a Witneſs to prove his own Act of Bankruptcy. *Field* v. *Curtis.*

The

The Lord Chancellor *Hardwicke* allowed an Affidavit of the Bankrupt, ſworn before a Maſter Extraordinary in *Cork*, to be read. *Ex parte Ruddock.*

Bankrupt's Affidavit ſworn in *Ireland*, admitted. Moſ. 78.

In *Trover* the Defendant was charged with his Confeſſion in a Depoſition taken before Commiſſioners of Bankrupt, and the Chief Juſtice refuſed to let the Defendant into any Parol Evidence to explain it. *Wilſon* v. *Poulter.*

No Parol Evidence to explain a Depoſition. 2 Stra. 794.

If the Petition to the *Lord Chancellor*, mentioned in the Declaration, recites, that the Bankrupt was indebted in 300 *l.* and the Petition produced at the Trial recites, that he was indebted in 150 *l.* yet that is no material Variance. *Kirne* v. *Smith.*

Petition againſt Bankrupt need not be given in Evidence. Ld. Raym. 741.

In an Action by Aſſignees of Commiſſioners of Bankrupts, they need not ſet out the Proceedings of the Commiſſion and Commiſſioners at large. *Lawſon* v. *Lamb.*

Lutw. 274. cited *arg.* 2 Ld. Raym. 1548.

It was held, that it need not appear in a Plea of Aſſignment by Commiſſioners of Bankrupts, that the Bankrupt was indebted in 100 *l.* *Slaughter* v. *Pierrepoint.*

Need not appear that Bankrupt was indebted 100 *l.* Lutw. 451.

As to the Caſe in *Lutw.* 274. that was in caſe of a Declaration brought by the Aſſignees, wherein a ſhort way of declaring hath been allowed upon the Authority of a great Number of Precedents; but as to the other Caſe in *Lutw.* 451. of a Plea, that was long before the Statute of * 5 *Geo. c.* 24. *par.* 20. which is expreſſed, that no Commiſſion ſhall iſſue, unleſs the Creditors, who petition for a Commiſſion, are Creditors in ſuch Sums as are mentioned for that Purpoſe in that Act. *Tully* v. *Spark.*

Plea of Bankruptcy muſt ſet forth Petition and Debts owing to petitioning Creditor. 2 Ld. Raym. 1548.

* Expired, *Cay.* But 5 Geo. 2. c. 30. ſect. 23. has the very ſame Words.

In *Trover* by Aſſignee of Commiſſioners of Bankrupt againſt Defendant, who pretends to have ſeized the Goods for Rent, *Note*, The Commiſſion muſt be proved, and the Aſſignee muſt prove an Act of Bankruptcy, as well as the Aſſignment by the Commiſſioners, and *Prima Facie* it ſhall be intended, that the Aſſignment was executed at the Time it bears Date, (which is but two Days before the Action brought) the Witneſſes not remembring the preciſe Day, but it appearing that the Date was erazed, *Holt* Ch. J. ſaid he expected better Proof, and then another Witneſs ſwore the preciſe Day. *Meggot* v. *Watſon.*

What Aſſignee muſt prove. Comb. 453.

In Debt the Defendant pleaded in Bar that the Plaintiff was a Grocer, and indebted, and became a Bankrupt; and that upon a Commiſſion taken out, he was declared a Bankrupt, and that the Debt for which the Action was brought againſt the Defendant, was aſſigned to his Creditors, *&c.* The Plaintiff took Iſſue that he did not become Bankrupt. *Hepworth* v. *Haigh.*

In an Action of Debt, Defendant pleads in Bar, that Plaintiff was a Bankrupt, and that his Debts were aſſigned. Lutw. 701.

An Action brought againſt a Bankrupt, the Defendant pleaded the Statute of Bankrupts, (in which it is ſaid, that the Perſon who does as the Act directs, may plead the General Iſſue) and that he manifeſtly became a Bankrupt before the Day, *&c.* *Holt*, C. J. ſaid, This Plea will not do; for when a Statute gives a Plea, it muſt be pleaded in the Words of the Statute. *Hull* v. *Holiday.*

Bankrupt Statutes ill pleaded. 11 Mod. 207.

In

In Action upon ſeveral Promiſes brought by Aſſignees of a Commiſſion of Bankrupt, the Declaration was, That in Conſideration the Defendant was indebted to the Bankrupt for Goods ſold and delivered, *&c.* he promiſed to pay the Aſſignees. After Verdict on *Non Aſſumpſit*, *&c.* it was moved in Arreſt of Judgment, that the Promiſe ought to have been made to Bankrupt; *ſed non allocat' per Cur'*. For the Debt being aſſigned to the Plaintiff, that is a good Conſideration. There are two Ways of Declaring; 1ſt, As here upon expreſs Promiſe to the Aſſignees. 2dly, Aſſignees may bring ſuch Action as the Bankrupt, as he may have an *Indebitat. Aſſump.* ſo may they, and Judgment for the Plaintiff. *Faſhon* v. *Dormet*.

Aſſignee of a Commiſſion may declare on a Promiſe to the Bankrupt. 7 Vin. Abr. 140. pl. 16. See before c. 10. Stra. 697.

In an Action by the Plaintiff as Aſſignee of the Effects of a Bankrupt, he declared, that the Defendant was indebted to the Bankrupt; and being ſo indebted, promiſed the Plaintiff to pay; the Defendant pleaded, that the Cauſe of Action did not accrue to the Bankrupt within ſix Years; and on Demurrer it was held ill, becauſe the Plea does not anſwer to the Promiſe laid in the Declaration, and it precludes the Plaintiff from proving any Promiſe to himſelf. Judgment for the Plaintiff. *Skinner* v. *Rebow*.

To a Declaration on Promiſe to an Aſſignee, *Non Aſſumpſit* to the Bankrupt, is an ill Plea. 2 Stra. 919. 2 Barnard. K. B. 73. See 6 Mod. 131, 309. Salk. 28.

Debt for Rent by *G.* againſt *B.* a Bankrupt, and Judgment before the Certificate was allowed, ſo that he had no Opportunity to plead it, and take the Benefit of * 4 *Ann.* But in the *Sci. Fac.* againſt the Bail, the Certificate was pleaded, and the Plea overruled; ſo that the Bankrupt had no Relief but

When Bankrupt's Certificate may be pleaded. 7 Vin. Abr. 140. pl. 18. *Expired, *Cay.* But ſame Words are in

5 Geo. 2. c. 30. ſect. 7.

but in Equity, or by *Audita Querela*, which is an equitable Remedy at Law. But *Cowper*, Chancellor, denied an Injunction, becauſe this was a merciful Law made in Favour of the Bankrupt, and in Prejudice of Creditors, and therefore not to be extended in Equity further than at Law. *Bagſhall* v. *Gore*.

Bankruptcy pleaded. 2 Lutw. 1273. See Stra. 533. *Lock* v. *Major*, and 5 Geo. 2. c. 30. ſect. 7.

Scire Facias againſt the Executors of *B.* upon a Judgment againſt their Teſtator, they plead, that he was a Trader, and indebted to ſeveral Perſons, and that upon their Petition to the *Lord Chancellor*, a Commiſſion of Bankruptcy iſſued againſt him, and that by Reaſon of the Death of King *Charles* II. a new Commiſſion iſſued in Time of King *James* II. and averred the ſaid laſt Commiſſion to be ſtill depending; and upon Demurrer it was held that this Plea is ill; becauſe the Defendants did not alledge, that their Teſtator was a Bankrupt at the Time of the Petition exhibited, or at the Time when the Commiſſion iſſued againſt him. The Court held this Exception incurable, becauſe by the Stat. 13 *Eliz. c.* 7. the Bankrupt is deſcribed in the firſt Place, and then the next Paragraph gives the *Lord Chancellor* Power to grant Commiſſions againſt Perſons therein deſcribed being Bankrupts, and that all the Precedents are with Averments of the Bankruptcy. *Gubbs* v. *Backwell*.

Comb. 108.

It was ruled in this Caſe, that in Pleading a Man to be a Bankrupt, it is ſufficient to ſay, that he became a Bankrupt *ad omnes Intentiones ſeparal' Statut'*, without ſetting forth any particular Act of Bankruptcy, as Departure out of the Kingdom, taking Sanctuary,

Sanctuary, or keeping his Houſe, and abſconding there. *Betts* v. *Lowe.*

In an *Indebitatus Aſſumpſit*, the Defendant pleaded, that the Plaintiff became a Bankrupt, and Commiſſion was taken out, and ſo all Goods, &c. belonged to the Commiſſioners, &c. The Plaintiff demurred, and had Judgment; for until an Aſſignment the Property of the Goods is not transferred out of the Bankrupt. *Cary* v. *Criſp.* Salk. 108.

Leave was given to plead *Non eſt Factum*, and a Diſcharge by a Commiſſion of Bankruptcy. *Atkinſon* v. *Atkinſon.* 2 Stra. 874.

The Defendant inſiſting upon his Diſcharge many Years ago under a Commiſſion of Bankruptcy, and it being doubtful whether the Clauſe, that enabled Bankrupts to plead generally, was ſtill in Force; he moved, and had Leave to plead it both Ways, Generally and Specially. Ld. *Clinton* v. *Morton.* 2 Stra. 1000. The Reporter adds, that he takes it to be a new Caſe upon the Act; the Words whereof are only, that he ſhall, with Leave of the Court, plead ſeveral Matters, and that he (the Reporter) adviſed the Motion. Ibid.

Leave was given to plead *Non Aſſumpſit*, and a Diſcharge by Bankruptcy, though ſaid to be denied in *C. P. Philips* v. *Wood & al'*. Ibid.

The Court gave Defendant Leave to plead Bankruptcy to the firſt Count, and to pay Money into Court on the Common Rule, and plead the General Iſſue to the other Counts. *Hall* againſt *Lane*, in Caſe, on ſeveral Promiſes. 2 Barn. Not. C. P. 276.

Rule to ſhew Cauſe why Defendants ſhould not plead doubly, Not guilty, and that Plaintiff became a Bankrupt, and his Effects Ibid. 292.

were

were aſſigned, diſcharged; theſe Pleas are not both neceſſary for the Defence, they amount to an Inverſion of the Action, and pleading Property in Defendant; the latter may be given in Evidence on the former; on *Non Aſſumpſit* every Thing may be given in Evidence but a General Releaſe. *Herbert* againſt *Flower* and others, in Trover.

Not ſaying where Converſion, cured by Verdict. 12 Mod. 306.

Action upon the Caſe by Aſſignee of Commiſſioners of Bankrupt, ſetting forth, that the Bankrupt had recovered ſuch a Sum againſt Defendant's Teſtator, and that Execution remained to be done, and the Debt was aſſigned to Plaintiff, and that Goods to ſuch a Value of Teſtator came to Defendant's Hands, which he converted to his own Uſe. After Verdict, it was moved in Arreſt of Judgment, becauſe not ſaid that his Commiſſion was obtained upon Petition in Writing, as Statute directs; *ſed non allocatur*; for though Chancery may refuſe to grant a Commiſſion without a Petition in Writing; yet if they will do it, it ſhall not vitiate; and this may be a ſupplemental Commiſſion, which requires no Petition in Writing; that it was not ſaid in the Declaration that the Money was not paid to the Bankrupt before the Act committed; but *per Cur'*, ſaying, that Execution remained to be done, ſupplies that, and Plaintiff had Judgment. *Turner* v. *Main.*

Chancery may refuſe to grant a Commiſſion without a Petition, and if they do, it is good. Ibid. But *Quære*, and ſee before, c. 6. p. 42. 2 Ch. Caſ. 199.

Comyns 205.

Indebitat' Aſſump'; Defendant pleads, that ſince the firſt of *June* 1705, *& ante impetr' orig'*, he became a Bankrupt within the ſeveral Statutes concerning Bankrupts, *Quodque cauſa Action' accrevit* before the Defendant

was

was a Bankrupt, & *de hoc pon' se sup' patriam*; upon this Plaintiff demurred, and shewed for Cause, *First*, That it did not appear when the Cause of Action arose; *secondly*, That the Plea concluded to the Country, whereas it ought to have been with Averment.

But without any Regard to these Reasons, the Court held the Plea bad, because it did not shew the Defendant was intitled to this Plea within the Statute * 4 & 5 *Ann.* c. 17. The Plea is bad at Common Law, and when a Statute allows such a Plea, the Defendant must shew that he pleads it *vigore Stat.* and it is not like the Cases where a Statute gives Liberty to plead the General Issue, and to give the Special Matter in Evidence; for here the Statute does not give any Authority to plead the General Issue, but to plead Generally in such Manner, and therefore he must shew that he pleads in such Manner by virtue of the Statute. *Fyson* and ———.

* Expired, *Gay.* But see 5 Geo. 2. c. 30. sect. 7.

Action upon a Note given by Bankrupt, to induce Creditor to sign Certificate; Defendant pleads *that he became* a Bankrupt such a Day, &c.

Gilb. Cas. 49. See before, c. 17. under Bankrupt's Certificate.

The Plaintiff demurred in Law, and Mr. *Salkeld* upon Argument insisted, That this general way of Pleading *that he became a Bankrupt*, is not good, but the Defendant ought to shew the Acts whereby he became a Bankrupt; the Bankruptcy is only a Collection or Conclusion of Law upon certain Facts, which ought to be set forth for the Court to judge upon, and not the Pleader to give

Co. Ent. 397, 674. 14 H. 6. 6. 4 Co. 6. b.

give his own Judgment only; in Pleading in Abatement it is not enough to say *quod abatevit*, but you muſt ſet out the Thing itſelf, *viz.* An Entry after the Death of the Anceſtor before the Heir enters.

The Defendant has not ſhewn himſelf ſuch a Bankrupt as is intitled to the Benefit of this Act; for it is relative to that of * 4 & 5 *Ann.* and muſt be conſtrued by that firſt Statute; a Surrender of himſelf within † 30 Days, and a Transfer of his Effects, is required, and therefore ſhould be ſet forth in the Plea, but here it comes in only by the Commiſſioners Certificate.

*Expired, *Cay.*

† 42 Days by 5 Geo. 2. c. 30. ſect. 1.

This amounts to the General Iſſue, and the whole Matter might have been given in Evidence upon that; here is nothing pleaded for the Plaintiff to traverſe, but the *ea intentione ad inducend' ſubſcribere*, he ſhould have pleaded it by Way of a corrupt Agreement.

Mr. *Whitaker contra:* We have ſaid we became Bankrupt *tiel jour & ann.* and the Act requires no more.

It is not neceſſary that we ſhould bring ourſelves within the Act of 4 & 5 *Ann.* but it is enough if we bring ourſelves within the particular Proviſions of the latter Act.

That is indefinite, and uſes the Words any Bankrupt, and not reſtrictive to ſuch Bankrupt as is within the former Act.

The Matter of this Plea would have come in upon the General Iſſue, but it is not ill for that Reaſon; for if a Plea diſcloſes a Point of Law as well as Matters of Fact, it is at the Election of the Pleader to plead it Generally

Generally or Specially; thus in the Caſe of Infancy, which may be given in Evidence upon *Non Aſſumpſit*; but ſurely it is more for the Advantage of the adverſe Party, when the Special Matter is ſhewn, and he is apprized of the Truth of the Caſe.

Parker, Ch. Juſt. This ſeems too general a Way of Pleading, that he became Bankrupt; ſurely he ought to ſhew the Special Matter in Order to bring himſelf within the Meaning of thoſe Words.

The Deſign of this laſt Act was only to extend to Bankrupts intitled to a Certificate, and to be thereupon diſcharged; but if the Defendant was never diſcharged, I do not ſee how the Act can operate upon this Note, for he is not damnified by the giving of it; and for this Reaſon it ſeems that he ought to have ſhewn himſelf ſuch a Bankrupt as is within the Act 4 & 5 *Ann.*

Eyre: Though the Words of the laſt Act be *any Bankrupt*, yet it muſt be taken to be ſuch as is intitled to be diſcharged, and that muſt appear by the Words of the Plea, and not only of the Certificate; and ſince that is not done, conſequently he has not ſhewn himſelf to be ſuch a Bankrupt as is by this Act made incapable to give ſuch a Note. See the Caſe of *Lock* v. *Major* in Stra. 534.

As to the firſt Exception to *that he became Bankrupt*, I think it was held in an *Audita Querela*, *Robinſon* v. *Bailey*, that it was neceſſary to ſet forth the Special Acts. *Adjourned to next Term.*

Mr. *Forteſcue*, for the Plaintiff, inſiſted upon the Exceptions taken laſt Term to the Plea. Gilb. Caſ. 139.

As

As to the General Pleading *that he became Bankrupt*, he ſaid it was both double and uncertain, for Bankruptcy inferred ſome Things certainly, and others uncertainly; that there are ſo many different Acts which make a Man a Bankrupt, that it is impoſſible to know how to apply Proof of it upon that involved Expreſſion. *Specot*'s Caſe, 5 *Rep. Lutw.* 274, 454. That ſuch General Pleading is diſallowed in all Caſes. 26 *H.* 8. 1. 9 *Ed.* 4. 24. that this Plea works by way of Releaſe and Diſcharge of a Demand, and therefore requires great Certainty. *Hob.* 296.

That the Defendant had not ſhewn himſelf to be ſuch a Bankrupt as was intitled to the Benefit of this Act; and he, who would diſcharge himſelf from a Debt by Statute, muſt bring himſelf within the Qualification of it.

Mr. *Page contra*: That this was only Matter of Conveyance to their Plea, and need not be ſhewn with preciſe Certainty. 34 *H.* 6. *Mich.* 19 *H.* 8. 29. *Plowd.* 65. *Jackſon* v. *Amory*.

Aſſignee need not ſhew how Party became Bankrupt. Carth. 29.

In a Special *Aſſumpſit* brought by Aſſignee of Commiſſioners of Bankrupt, he need not ſhew how the Perſon became Bankrupt. Adjudged, *Pepys* v. *Low*.

Nothing paſſes by Bargain and Sale before the Inrolment. Carth. 178.

In Ejectment brought by the Aſſignees of Commiſſioners of Bankrupt, upon the Bankruptcy of Alderman *Backwell*, in which theſe Aſſignees were Leſſors of the Plaintiff in Ejectment, and a Special Verdict being found, which was now to be argued, the Attorney General *Trevor* interrupted the arguing it; for that the Verdict had abated the Declaration; for it appeared by the Verdict, that the Demiſe

Demiſe to the Plaintiff, upon which this Ejectment was brought, was made by the Aſſignees of the Bankrupt before the Inrolment of the Bargain and Sale, by which the Commiſſioners had aſſigned the Lands to the Leſſors of the Plaintiff; and though the Inrolment of a Deed ſhall relate to the Delivery of the ſame Deed to avoid meſne Incumbrances, yet every Bargain and Sale, before Inrolment, is void, and cannot be made good by any Relation, becauſe the Bargainee hath no Eſtate before Inrolment, and if ſo, he could not grant any Eſtate; and here it appears that the Leſſors of the Plaintiff had not any Title at the Time of the Demiſe, upon which the Plaintiff declared, and the Court held this to be a fatal Exception. *Bennet* v. *Gandy.*

CHAP. XXIX.

Of renewed Commissions.

Half Fees only to be paid upon renewing Commissions. 5 Geo. 2. c. 30. sect. 44.

"IF it shall be necessary to renew any "Commission of Bankruptcy by Reason "of the Death of any of the Commissioners "named in such Commission, so that a suffi- "cient Number of Commissioners shall not "be living who can act therein, or for any "other Cause, in every such Case, such "Commission shall be renewed, and but "half of the Fees usually paid upon granting "or obtaining Commissions of Bankrupt, "shall be paid for any such renewed Com- "missions.

CHAP. XXX.

Of Petitions.

IF a Creditor omits to come in and prove his Debt till after a firſt Dividend is made, on Petition to the Court, they will permit him to come in and prove his Debt, and will order him to be paid, in Proportion with what the other Creditors have received, upon ſhewing by Affidavit that it was not by his wilful Default that he did not prove his Debt before the Dividend was made, but ſo as not to diſturb any former Dividend; and ſuch Creditor has a Right to receive the Money in the Aſſignees Hands, before any other Dividend is made.

As to Creditors Dividends. Dav. 541, 542.

The Meaning of not diſturbing a Dividend already made, is this:

Suppoſe a Bankrupt's Effects amount in the Whole to 600*l.* clear of all Charges, and he owes 1500*l.* and 900*l.* is only proved, the Commiſſioners knowing of no other Debts, order a Dividend of 10*s.* in the Pound to be made amongſt ſuch Creditors; this will carry away 450*l.* to the firſt Creditors, and leave only 150*l.* in the Aſſignees Hands; and if afterwards other Creditors come and prove their Debts to the Amount of 600*l.* ſuch Creditors will loſe 150*l.* becauſe there will be but 5*s.* in the Pound remaining to pay them, inſtead of 10*s.* and they have no right to diſturb the firſt Dividend, or to re-

The Meaning of diſturbing a Dividend. Ibid.

call any Part of the 10*s.* in the Pound received by the other Creditors; but if on a ſecond Dividend there is ſufficient in the Aſſignees Hands to make up to thoſe Creditors that did not firſt prove their Debts under the Commiſſion 10*s.* in the Pound, then ſuch 10*s.* in the Pound is firſt to be paid to them, before any ſecond Dividend is made to the Creditors in general. See more of Dividends under Chap. 24. of Diſtribution.

As to ſettling Accounts between Creditors and Bankrupt; Dav. 542, 543. and ſee Chap. 13.

If a Creditor has an Account depending with a Bankrupt, where the Debt is diſputed, the Court, on a Petition, will order the Commiſſioners to ſettle the Account with the uſual Directions, *viz.* That all Books, Papers and Writings, ſhall be produced upon Oath, and that each Party ſhall have all juſt Allowances, and be examined upon Interrogatories, or as the Commiſſioners ſhall direct; and after the Account is taken, the Commiſſioners make their Certificate to the Lord Chancellor, who, upon the Balance of either Side, will make ſuch Order as is Juſt; and if there is no Diſpute in the Account, the Commiſſioners will ſettle it without an Order.

Creditor may prove a Debt not due, upon Rebate of 5 *l. per Cent.* Ibid. See Chap. 16. p. 203.

If a Creditor has a Note or other Debt not due, the Court will give him Leave to prove his Debt, allowing a Rebate, according to 7 *Geo. c.* 31. after the Rate of 5*l. per Cent.* by the Year.

May inſpect Aſſignees Accounts. See Chap. 16. p. 211.

If Creditors want to inſpect the Aſſignees Accounts, and are refuſed by them, the Court, on Petition, will oblige the Aſſignees to

to ſhew their Accounts, according to the Directions of the Statutes.

If a Creditor, who has not proved his Debt under the Commiſſion, will petition to oppoſe the Bankrupt's Certificate, the Court will diſmiſs ſuch Creditor's Petition; becauſe no Creditor can oppoſe the Bankrupt's Certificate, but ſuch a one as is admitted under the Commiſſion, and has Value on his Side to do the ſame.

Creditor cannot oppoſe Bankrupt's Certificate, before he has proved his Debt. Dav. 543. See Chap. 18.

If there are joint and ſeparate Creditors, either under a joint or ſeparate Commiſſion, the Court will permit joint Creditors to prove their Debts under a ſeparate Commiſſion, and ſeparate Creditors under a joint Commiſſion, and will order joint and ſeparate Accounts to be taken, diſtinguiſhing, according to the Nature of the Caſe, the one from the other, and direct how and in what Manner ſuch joint and ſeparate Eſtate ſhall be divided, and ſuch Creditors have a Right to ſign or oppoſe the Bankrupt's Certificate.

As to joint and ſeparate Creditors. Ibid. See Chap 20.

If a Creditor has a Mortgage upon a Bankrupt's Eſtate, and is evicted in his Title; or if the Creditor will aſſign over ſuch Mortgage for the Benefit of the Bankrupt's Creditors, the Court on Petition will permit him to prove his Debt under the Commiſſion, and if a Creditor has a Mortgage upon an Eſtate, or a Security upon Effects that is not ſufficient to pay him his whole Debt, the Court, if the Value of the Security can be aſcertained, will permit him to come in as a Creditor for the Reſidue.

As to a Mortgagee. Ibid. See Chap. 16.

Alſo, if a Creditor has a Mortgage upon Lands, or a Pledge upon Goods, and the

As to a Pawnee. Ibid. 543, 544.

Value of the Security is not aſcertained, it is uſual for the Creditor to come in as a Claimant for his Debt, but he does not receive a Dividend, until the Security is ſold, or the Value aſcertained, and the Court, on Petition, uſually refers it to the Commiſſioners to aſcertain the Value and take the Account; and it is frequently ſettled between the Aſſignees and the Creditor; and then the Creditor is intitled to a Dividend.

When Creditor muſt make his Election. Dav. 544. See Chap. 18.

If a Creditor, who has proved his Debt under a Commiſſion, will, notwithſtanding, proceed againſt a Bankrupt at Law, the Court will, on Petition, order him to make his Election, and to waive all Benefit of Dividends under the Commiſſion, and if he has received any Dividend, upon making ſuch Election to proceed at Law, the Court will order ſuch Creditor to refund his Dividend, and if the Bankrupt obtains his Certificate, and ſurrenders himſelf to the Action brought againſt him, upon his obtaining ſuch Certificate, and pleading the ſame in bar to ſuch Action (if the Debt was due before the Bankruptcy) ſuch Plea will be an effectual Bar to the Creditor who ſhall bring ſuch Action; and the Court of Law where the Action was brought, will diſcharge the Bankrupt on filing Common Bail; and ſuch Creditor has afterwards no Remedy againſt the Bankrupt's Perſon or Effects, or intitled to any Dividend with the reſt of the Creditors.

As to Agreements between Creditors. Ibid.

The Court, on Petition, will order Agreements between joint and ſeparate Creditors, or Creditor and Creditors, ſo far as relates to themſelves, to be carried into Execution.

The

The Court, on Petition, will order one Debt to ſet-off againſt another, if both Debts are before the Commiſſion; and the Commiſſioners frequently do it without any Order. As to Set-offs. Dav. 544. See Chap. 13.

Creditors may petition the Court to ſet aſide a fraudulent Execution, and on ſuch Petition the Court uſually directs an Iſſue to try whether it was fraudulent or not, or taken out after the Bankruptcy; and if it is found to be fraudulent, or taken out after the Bankruptcy, the Court will ſet the ſame aſide, and the Party, if he has any real Debt, muſt come in with the reſt of the Creditors. Fraudulent Executions. Ibid. 544, 545.

After Aſſignees are choſen, their Duty is to get in the Eſtate and Effects of the Bankrupt as ſoon as may be, and to make a Dividend of the ſame; and if they keep the Effects in their Hands longer than they ſhould do, the Court on a Petition, and Proof being made, will order an Account to be taken before the Commiſſioners, and to make a Dividend; and if any manifeſt Delay or Neglect appears in them, will oblige them to pay Intereſt and Coſts. As to Aſſignees. Ibid. See Chap. 10.

If Aſſignees attempt to ſell Eſtates at an under Value, or enter into any clandeſtine Agreement, either with the Bankrupt or any other Perſon, the Court, on Application, will by Order reſtrain them from ſelling ſuch Eſtates or Intereſts, or remove them. As to their ſelling Eſtates. Ibid.

If Aſſignees have had Suits in Law or Equity, on Application to the Court, the Court will order the Commiſſioners to ſettle the Account, allowing them all reaſonable As to ſettling Aſſignees Accounts. Ibid.

Coſts and Charges, and direct the Aſſignees to make a Dividend of the Reſidue.

As to unjuſt Aſſignees. Dav. 545.

If there is any Injuſtice committed by the Aſſignees, and by the Conſent of the Bankrupt, they will admit ſham Debts to be proved, the Court will remove ſuch Aſſignees, and order the Conſideration of ſuch Debts to be inquired into, and all Parties to be examined upon Interrogatories, and appoint new Aſſignees, and direct the Commiſſioners to ſee what is really due from the Bankrupt's Eſtate to his Creditors; and after the Aſſignees are choſen, will order Coſts of the Parties ſo acting unjuſtly, to be taxed by a Maſter, and paid by them.

As to their Neglect to get in Effects. Ibid. 546.

If Aſſignees live at a great Diſtance from the Bankrupt's Eſtate or Effects, whereby ſuch Eſtate or Effects may be incumbered with heavy Charges, or Neglect to get in ſuch Effects; upon the Application of the Majority of the Creditors, who have proved their Debts under the Commiſſion, and proving the ſame by Affidavit, the Court will diſcharge ſuch Aſſignees, and direct a new Aſſignment to be made to ſuch other Aſſignees as the Creditors ſhall appoint, and direct that the old Aſſignees ſhall join in ſuch new Aſſignment.

As to their bringing Suits. Ibid. See Chap. 11. p. 153.

The Clauſe with reſpect to Aſſignees bringing Suits in Law or Equity, is not compulſive upon them; and therefore if Creditors petition the Court that Aſſignees may bring ſuch Suits, the Court uſually appoint a Meeting of the Creditors, to conſider if it is proper to bring ſuch Suits, and to advertiſe ſuch Meeting in the *Gazette*, or

to

to give particular Notice in Writing to all the Creditors; and at ſuch Meeting the Aſſignees may inſiſt on being indemnified by the reſt of the Creditors before the bringing ſuch Suits, if they are of Opinion they have not ſufficient in their Hands to reimburſe themſelves.

If it appears that there are Accounts between the Bankrupt and the Aſſignees, and that the Aſſignees, although there may be Notes or Bonds ſubſiſting, ſo as to intitle them to prove their Debts, yet if upon the Balance of ſuch Accounts, ſuch Aſſignees appear to be Debtors to the Bankrupt's Eſtate, the Court will for ſuch Reaſon remove them. As to removing Aſſignees. Dav. 546.

If there appears Partiality and Unfairneſs in the Choice of Aſſignees, the Court will alſo for that Reaſon, on Petition, remove ſuch Aſſignees.

If it appears that the Aſſignees have prevented Creditors from proving their Debts, to make Number and Value for the Bankrupt's Certificate, and for that Purpoſe have conteſted ſuch Debts, and have refuſed to admit them, the Court will for ſuch Unfairneſs remove ſuch Aſſignees, and admit ſuch Creditors to prove ſuch Debts as ſhall appear to be juſtly due to them.

If an Iſſue was directed to be tried in the Time of the old Aſſignees, the Court, on Petition, will order the ſame Iſſue to be tried by the new ones. Ibid. 547.

The Court, on Petition, will order the Commiſſioners to inquire into the real Conſideration of Debts and Notes, and of uſurious As to the Conſideration of Debts. Ibid.

rious Contracts; and will order the Aſſignees to be reſtrained from making any Dividend, until the Commiſſioners ſhall have made their Certificate to the Court; and if there appears to be more than legal Intereſt received, or any unfair Tranſaction, with regard to the obtaining or ſwelling ſuch Debt, the Court will, on bringing a Bill, by Decree, reduce ſuch unconſcientious Demand to the Sum which is really due.

The Accounts of Aſſignees are frequently ſent by the Court to a Maſter in Chancery, to be ſettled; and alſo the Taxation of Coſts, and the Enquiry and Examination of Aſſets.

In caſe Aſſignee dies. Dav. 547.

If one Aſſignee dies, the Eſtate of the Bankrupt, Real or Perſonal, goes to the Survivor; and on the Death of the Survivor, the Court will direct the Heir, Executor or Adminiſtrator of the ſurviving Aſſignee, to join with the Commiſſioners in a new Aſſignment, or Bargain and Sale, to ſuch new Aſſignees as the Creditors capable of chuſing ſhall appoint.

Petitions in other Caſes. Ibid.

If a Bill is brought againſt a Bankrupt before he was ſo, and the Plaintiff, by the Conſent of the Aſſignees, petitions that the Bill may be diſmiſſed without Coſts, and that he may be admitted a Creditor under the Commiſſion, the Court in this Caſe will order the Commiſſioners to take an Account, with the uſual Directions; and if a Balance is found due to the Petitioner, will order him to receive his Dividend with the other Creditors; but the Conſideration of Coſts is

is uſually reſerved until the Commiſſioners have made their Certificate.

A Bankrupt may petition to have his Certificate allowed; but if on Proof it ſhall appear to be unfairly obtained, the Court, on Petition of Creditors, will not allow ſuch Certificate. As to the Bankrupt's Certificate. Dav. 548. See Chap. 18.

When Petitions appear to the Court to be without Foundation or Vexatious, the Court frequently diſmiſs ſuch Petitions with Coſts.

The Court, on Petition, will order a Solicitor to the Commiſſion to deliver his Bill to be taxed. As to Clerk to Commiſſion.

The Court will not ſet aſide a Deed on a Petition, and if a Purchaſer, with his Eyes open, will buy a Mortgage or a Leaſehold Eſtate, inſtead of a Fee-ſimple, the Court will not decide theſe Points in a ſummary Way, but will leave the Parties to bring their Bill, and to prove the Reaſons for making ſuch Purchaſe, or the Impoſition in the ſame. As to Purchaſers.

All Petitions in Bankruptcy are lodged at the Secretary's Office of Bankrupts; and after the Lord Chancellor has directed Attendance thereon, a Copy of ſuch Petition ſhould be ſerved on the proper Parties as ſoon as conveniently may be, that both Sides may have an Opportunity to file their Affidavits in Time; for Petitions are frequently put off by there appearing to be a Surprize, or the Parties are ſtraightened in Time for making a proper Defence. Where Petitions are to be lodged. See Chap. 32.

CHAP.

CHAP. XXXI.

Of ſuperſeding Commiſſions.

When Commiſſion may be ſuperſeded. Vern. 269.

IF all the Creditors, who petitioned for a Commiſſion, ſhould agree to have it diſcharged or ſuperſeded, it may be granted.

When it may be renewed and *Superſedeas* revoked. See 2 Ch. Caſ. 192, 193. Vern. 208.

And if other Creditors, who were not Petitioners, ſhould pray a Renewal of the Commiſſion and a Revocation of the *Superſedeas*, *Quære*, if it may not be granted, eſpecially if the *Superſedeas* was within four Months after the granting of the Commiſſion.

Fraudulent Commiſſions to be ſuperſeded.

"Commiſſions fraudulently obtained to "be ſuperſeded, and another granted." 5 Geo. 2. c. 30. ſect. 24.

Chancellor's Authority as to ſuperſeding Commiſſions. Freem. 270, 271.

If there be once a Petition in Writing, my *Lord Chancellor* may grant and repeal Commiſſions *toties quoties*, and need not a new Petition for a new Commiſſion, but may ſuperſede the old Commiſſion, either for the Miſcarriage of the Commiſſioners, or in caſe of Death, or for any other Reaſon, and may grant a new Commiſſion; and the granting a new Commiſſion is a *Superſedeas* to the old one; reſolved. *Hinton*'s Caſe.

Commiſſion not ſat on three Months, ſuperſeded. S. C. C. 46.

A Commiſſion was taken out, and not ſat on until three Months after. Ld. Ch. *King* ſaid it plainly ſhews it was done to protect the Eſtate, the Commiſſion ſhall be ſuperſeded

ſeded for Example-ſake, that ſuch Things ſhould not be practiced. *Comb*'s Caſe.

A. ſued out a Commiſſion of Bankruptcy againſt *B.* and kept it for ſix Months without doing any Thing upon it, and afterwards executed it. Ld. Ch. *King*, on a Petition, ſuperſeded it for this very Reaſon; and it being urged, that the Expence of another Commiſſion would be a freſh Charge upon the Bankrupt's Eſtate, his Lordſhip replied, he would take Care that the former Commiſſion ſhould not be at the Charge of the Bankrupt's Eſtate. *Ex parte Puleſton.*

Not ſat on ſix Months, ſuperſeded. 2 Will. Rep. 545.

Per Ld. Ch. *Hardwicke*, where Debt is due to Wife as Adminiſtratrix, the Huſband alone cannot take Oath of this as a Debt due to himſelf, in order for a Commiſſion of Bankruptcy; Commiſſion ſuperſeded, and Reſtitution awarded. *Ex parte Staples.*

Commiſſion ſuperſeded, becauſe petitioning Creditor's Debt was due to him as Huſband to his Wife Adminiſtratrix.

Toms and *Allen* having recovered Judgment againſt one *Barnaby*, he was ſurrendered by his Bail, and then charged in Execution; after which the Plaintiffs in that Action preferred their Petition to the *Lord Chancellor*, as Creditors, for a Commiſſion of Bankruptcy, which iſſued, but was ſuperſeded upon the Bankrupt's Petition. Lord Chancellor *King* being of Opinion, that the Body of the Debtor being in Execution, it was a Satisfaction of the Debt in Point of Law; ſo that they were not Creditors who could petition. *Barnaby*'s Caſe.

Becauſe the petitioning Creditors had the Bankrupt's Body in Execution. Stra. 653. R. S. L. 189.

A Bankrupt preferred a Petition to ſuperſede the Commiſſion, on a Suggeſtion that the

Becauſe petitioning Creditors Debts

were barred by the Statute of Limitations. Moſ. 37. The contrary is held in 2 Stra. 746. but that Caſe is not Law.

the Debts of the petitioning Creditors did not amount to 200*l.* ſeveral of their Debts being barred by the Statute of Limitations. And Ld. Ch. *King* propoſed, that this Iſſue ſhould be tried at Law, whether the petitioning Creditors are Creditors for 200*l.* within the Meaning of the Act, in which Trial the Bankrupt was to have the Benefit of the Statute of Limitations, in the ſame Manner as upon a Plea of *Non Aſſumpſit infra ſex annos*; but the Counſel for the Creditors being unwilling to have this Iſſue tried, the *Lord Chancellor* ſuperſeded the Commiſſion, becauſe the Statute would be eluded, if the Creditors, who had ſuffered it to run upon their Demands, ſhould be allowed to take out a Commiſſion. *Anon.*

Becauſe Aſſignee of a Bond was the petitioning Creditor. 2 Stra. 899. Caſ. Temp. King, *&c.* 6.

A Commiſſion of Bankruptcy was ſuperſeded, becauſe granted upon the Petition of an Aſſignee of a Bond, who, though he is an equitable, yet is no legal Creditor. *Medlicot*'s Caſe.

Becauſe petitioning Creditor's Debt was contracted after Act of Bankruptcy. 2 Stra. 744.

In Trover, by the Aſſignees, under a Commiſſion againſt *Albertus Burnaby*, it appeared, he was a Bankrupt in *January* 1724, and the Debt of the petitioning Creditor was a Note, dated in *September* 1725; and the Chief Juſtice was of Opinion, it was a void Commiſſion; the Acts of a Man after an Act of Bankrupty being void; ſo the Plaintiffs were nonſuited. *Toms* v. *Mytton.*

If there is not a Debt due to the petitioning Creditor, in this Caſe the Court orders the Commiſſioners to inquire into the Nature of the Debt, and to certify the ſame to the Court; and if there is not a ſufficient Foundation for the Debt, the Court will ſuperſede it.

Becauſe no Debt due to petitioning Creditor. Dav. 548.

If the Party inſiſts he is no Trader, the Court uſually directs ſuch Facts to be tried, and if on ſuch Trial it appears to the Court that he is not a Trader, the Court will for theſe Reaſons ſuperſede the Commiſſion; and if the Party appears to be an Infant, the Court, on Proof made of ſuch Infancy, will ſuperſede the Commiſſion.

If Party is no Trader, or an Infant, Commiſſion will be ſuperſeded. Ibid.

If the Party, after a Commiſſion iſſued, makes a Satisfaction, or gives Security to make a Satisfaction to all the Creditors, and they give him a Releaſe; for theſe Reaſons the Court will, on Petition, ſuperſede the Commiſſion.

If Party gives Satisfaction to his Creditors, and they give him a Releaſe, the Commiſſion will be ſuperſeded. Ibid.

If a Bankrupt conveys all his real Eſtate to Truſtees, for the Benefit of his Creditors, and they accept of ſuch Conveyance, the Court, in this Caſe, will order the Creditors to deliver up all their Securities to the Bankrupt, and that the Bankrupt ſhall deliver up all the Title Deeds, and join in the Conveyance; and that the Truſtees ſhall proceed in the Truſt, and that the Bankrupt ſhall pay the Charges of the Commiſſion, deducting the Money out of the Aſſignees Hands.

Bankrupt conveys his Eſtate to Creditors. Ibid. 549.

If a Perſon ſuppoſes that a Commiſſion of Bankruptcy is going to be taken out againſt him, he may enter a *Caveat* in the Secretary's Office

Of entering a Caveat. Ibid.

Office against the same; or if a Commission has issued against him, and he is not minded to be a Bankrupt, he may petition the Court that such Commission may not issue against him, or that it may be superseded; and in such Petition he sets out, that he is not a Trader, and within the Intent of the Statutes relating to Bankrupts, and that he has committed no Act of Bankruptcy, or that there is no sufficient Debt whereon to ground a Commission; and upon hearing the Merits of this Petition, the Court in some Cases determines the Point, and in other Cases directs an Issue at Law to try the same; and if on the Trial of such Issue, the Party is not found to be a Bankrupt, the Court will not grant such Commission, or if granted, will supersede the same.

If Bankrupt applies to supersede Commission, what he must prove.

If a Commission, taken out in an adverse Manner, is superseded, and the Party on the Trial is not found Bankrupt, the Court, according to the Nature of the Case, frequently will order Costs to the Party against whom the Commission is taken out; or may, if they think proper, assign over the Bond given to the *Lord Chancellor*.

Costs may be ordered, or Bond assigned. Ibid. 550.

CHAP.

CHAP. XXXII.

Of the Secretary of Bankrupts, his Office and Fees.

THE Secretary of the Commiſſions of Bankrupts under my Lord Keeper *Henley*, at this preſent Time is, *Philip Carteret Webb*, Eſq; at his Chambers, No. 21. in the *Old Buildings*, *Lincoln's Inn*, or at his Houſe in *Great Queen Street*, *Lincoln's Inn Fields*; and according to the Preſentment of the Gentlemen who were appointed to examine into the Nature of ſeveral Offices in the Law, and the Fees thereto belonging, it appears, that this Officer is appointed by the *Lord Chancellor*, *&c.* by Parol, takes no Oath of Office, and is removeable at Pleaſure. They alſo found, that this is an antient Officer, and that his Duty is to lay before the *Lord Chancellor*, *&c.* the Affidavits, Petitions and Bonds, upon which Commiſſions of Bankrupts are to be founded, and to write his Lordſhip's Orders on ſuch Petitions, to enter them in Books kept for that Purpoſe, and to attend his Lordſhip in Court on hearing all Petitions relating to Bankrupts, and to draw up and to enter the Orders thereon, and to attend his Lordſhip in Turn with other his Secretaries. Dav. 146.

They find, that the ſaid Office has been for ſeveral Years laſt paſt executed by the ſaid Secretary, or his Deputy, and that no

Officer, Clerk or Miniſter, except the Secretary and his Deputy, doth or of Right ought to belong to this Office.

Dav. 147. And the following Fees are due to ſuch Secretary:

	£.	s.	d.
For every Petition for an original Commiſſion —— ——	1	0	0
For every Petition for a renewed Commiſſion —— ——	0	10	0
More for every Commiſſion ſealed at a private Seal ——	0	1	0
For every other Petition anſwered	0	12	6
For every Order —— ——	0	17	6
For Copy of every Order or Petition, for the firſt Sheet --	0	2	0
For every ſubſequent Sheet —	0	0	8
For Filing and Copy of every Certificate, Report, Exception or Affidavits for the firſt Sheet	0	2	0
For every ſubſequent Sheet —	0	0	8
For Filing every Affidavit, Letter of Attorney, and the like, relating to Commiſſioners, or Certificates, where no Copies are delivered, each —	0	2	0
For every Certificate allowed by the *Lord Chancellor*, *&c.*	1	1	0
For every Warrant for a Notice in the *Gazette* of the Bankrupt's Certificate being left, or any other Certificate, if required --	0	2	6
For ſetting down a Petitition to be heard ——	0	1	0
For a Search ——	0	1	0

For

	£.	s.	d.
For a Docquet of a Commiſſion, (which is rarely required) —	0	2	6
For Filing every Affidavit, with or without Schedules —	0	0	4
For the Officer or his Deputy's Hand —	0	1	0
For the Copy of the firſt, and every other Side —	0	0	8

The firſt Side to contain nineteen Lines, and every other Side ſeventeen Lines, and ſix Words in each Line, except the Titles and Schedules of Accounts annexed to ſuch Affidavit, which are to contain four Words in a Line, beſides the Columns of Figures on the right Hand, and Dates and Times in Figures on the left Hand. Dav. 148.

The above Fees to be paid by the Party filing and requeſting ſuch Copy, and not otherwiſe.

Where the Affidavit is already filed.

	£.	s.	d.
For the Officer's Hand —	0	1	0
For the Copy of the firſt, and every other Side —	0	0	8

The two laſt Fees to be paid by the Party requeſting ſuch Copy, and not otherwiſe.

CHAP. XXXIII.

Of the Clerk of the Inrolments, his Appointment, Office and Fees.

Lord Chancellor, *&c.* to appoint Clerk of Inrolment and his Office and Fees.

5 Geo. 2. c. 30. sect. 41.

"LORD Chancellor, *&c.* shall appoint "a Place near the Inns of Court where "Commissions of Bankrupts, Depositions, "Proceedings, Certificates, and other Mat- "ters and Things, shall be entered of Re- "cord, where all Persons shall be at Liberty "to search; and the *Lord Chancellor, &c.* "shall by Writing appoint a proper Person, "who shall (by himself, or Deputy, to be "approved of by the *Lord Chancellor, &c.* by "Writing) enter of Record such Commis- "sion and other Things, and have the Cus- "tody of the Entries thereof; and also ap- "point such Fee for his Labour therein, as "the *Lord Chancellor, &c.* shall think rea- "sonable, not exceeding what is usually paid "in like Cases: And the Person so to be "appointed, and his Deputy, shall continue "to enter of Record all the Matters afore- "said, and to have the Custody of the same, "so long as they shall behave themselves "well, and shall not be removed but by "Order in Writing, under the Hand of the "*Lord Chancellor, &c.* on good Cause there- "in specified."

Dav. 149.

And an Appointment under the Hand and Seal of the late Ld. Chan. *King*, dated the 10th

10th Day of *Auguſt* 1732, was produced to the Jury, whereby, in Purſuance of the ſaid Act, his Lordſhip appointed the Office or Dwelling-houſe of *Vigerus Edwards*, Eſq; (then Clerk of the Inrolments) in *Shire Lane*, to be the Place where all Commiſſions of Bankruptcy, Depoſitions, Proceedings and Certificates, and other Matters and Things aforeſaid, ſhould be entered of Record; and thereby appointed the ſaid Mr. *Edwards* to be the Perſon to enter of Record all ſuch Proceedings, to hold the ſaid Office by himſelf, or his ſufficient Deputy, to be approved by the *Lord Chancellor*, *&c.* ſo long as he ſhall behave himſelf well; and the ſaid Ld. *King*, in Purſuance of the ſaid Act, appointed the Fees therein ſpecified, as reaſonable Fees, and directed a Table of them to be hung up in the ſaid Office, which are as follow, *viz.*

	l.	*s.*	*d.*
For inrolling of all Proceedings, for each Roll (each Roll to contain ninety Lines, and fourteen Words in a Line) ——	0	10	0

And after that Rate for every longer or ſhorter Entry.

For the Indorſement of any Commiſſion or Certificate, and for the Subſcription to any Proceedings of ſuch Commiſſion, and the Examination thereof -	0	2	6
For every Sheet of a Copy of any Inrolment, beſides the King's Duty ——	0	0	8

	£.	s.	d.
For examining and signing such Copy	0	2	0
For every Search	0	1	0

The present Clerk of the Inrolments is Mr. *Harry Harmood*; and his Office is kept at the Secretary of Bankrupt's.

CHAP.

CHAP. XXXIV.

Of the Patentee and his Deputy.

AS to this Officer, the Jury preſented, that they find by ſeveral Statutes, particularly in one made in the thirteenth Year of Queen *Elizabeth*, Commiſſions were directed to be iſſued by the Lord Chancellor, Lord Keeper for the Time being, appointing ſuch Perſons as to him ſhould ſeem good, to take Order concerning Bankrupts Bodies, Lands and Goods. Dav. 150.

And that in the fortieth Year of Queen *Elizabeth*, there was then a Clerk for writing Commiſſions of Bankrupt.

And they find, that on the fourteenth of *February* in the fourteenth Year of King *James* I. a Patent iſſued under the Great Seal, a Copy whereof was produced and proved unto them, appointing *Arthur Maynwering*, Eſq; and *Nicholas Archebold*, or their Deputy, to execute the Office of the Execution of the Laws and Statutes concerning Bankrupts, which is the firſt Grant of this Office that appeared to the Jury; and they find that the ſame is an ancient Office, neceſſary for the Execution of the Laws and Statutes concerning Bankrupts.

And that her late Majeſty Queen *Anne*, by Letters Patents of the ſixth Day of *November* in the ſeventh Year of her Reign, granted this Office to *William Cowper* and *John Cowper*, (the late Patentees, Sons of *Spencer*

Cowper, Eſq;) and to either of them, or their ſufficient Deputy, for their Lives, and the Life of the longer Liver of them, from the Death, Surrender or Forfeiture, of *Orlando Bridgman*, Eſq; the then Patentee of this Office.

Dav. 151, They find that no Officer, Clerk nor Miniſter, other than the Officers appointed by Letters Patent, or their immediate Deputy, do or of right ought to belong to this Office; and that the Service, Charge and Attendance of this Officer, is to write, engroſs, and procure to be paſſed, by and under the Great Seal, all Commiſſions, Writs of *Superſedeas*, *Procedendo*, and all other Writs and Things incident and neceſſary to the due Execution of the Law againſt Bankrupts, and to attend at the Office every Day, *Sundays* and *Chriſtmas* Days excepted.

And the following Fees are due to them.

	l.	*s.*	*d.*
For engroſſing Petition, Commiſſion, and Stamps ——	5	18	2

But if the Suitor, or his Agent, bring his Petition to this Office ready engroſſed, (which he is at Liberty to do) then 20*s.* is to be deducted out of this Fee of 5*l.* 18*s.* 2*d.* on that Account; and to be allowed the Attorney.

Patentee ——	4	1	0
Attorney ——	1	0	0
Hanaper ——	0	12	6
Purſe-bearer, *&c.*	0	3	0
	5	16	6

	£.	s.	d.	
For a Docquet and Stamps —	0	1	6	
For drawing Petition to renew Commiſſion, and Stamps, if done by this Officer at the Requeſt of the Suitor, and not otherwiſe —	0	6	6	
For every renewed Commiſſion and Stamps —	3	3	0	

By *5 Geo.* 2. *c.* 30. *ſect.* 44. only half Fees uſually paid upon granting or obtaining of Commiſſions of Bankrupt, are to be paid for any renewed Commiſſion.

For a Docquet on a renewed Commiſſion, and Stamps	0	1	6	
For a *Superſedeas*, and Stamps	1	13	2	
For a *Procedendo*, Stamps and Docquet —	3	1	9	
For drawing Bond and Affidavit to ground a Commiſſion upon and Stamps, if done by this Officer at the Requeſt of the Suitor, but not otherwiſe	0	7	6	
For a Search —	0	1	0	Dav. 152.
For a Docquet from the Book	0	2	6	
For a Certificate —	0	2	6	

As to the Petition, the Jury were of Opinion, that it was the natural Right of the Perſon who applied for a Commiſſion, to employ his own Solicitor in preparing and ingroſſing the Petition, and the Suitor, by his own Solicitor, applies to the Secretary

tary of Bankrupts, and lodges his Petition with him.

And as to the Bond and Affidavit, they found by the Evidence which was laid before them, that the Affidavit is always prepared by the Solicitor of the Perſon applying for the Commiſſion, and that the Bond is generally filled up by the ſame Perſon.

And when this is done, they are lodged with the Secretary of Bankrupts, to abide his Lordſhip's Determination.

And when the Petition is preferred, and the Affidavit and Bond regularly given, and a *Fiat* on the Petition obtained, this Officer is to receive the ſaid Petition from the Secretary, and to prepare and ingroſs the Commiſſion, and then, and not before, the Buſineſs of that Office begins.

CHAP.

CHAP. XXXV.

Of the Meſſengers of Commiſſions of Bankrupts, their Appointment, Duty and Fees.

THE Meſſengers are verbally appointed by the Secretary of Bankrupts, and the preſent ones are,

Mr. *William Cheſhyre*, in *Caſtle Yard, Holborn*, or at his Office, next Door to the Rolls in *Chancery Lane*.

Mr. *William Gibbons*, in *Newgate Street*, or at his Office near the *Roll's* Coffee Houſe, *Chancery Lane*.

Mr. *William Dunch*, in *Took's Court, Curſitor's Street*, or at his Office over-againſt *Symonds Inn, Chancery Lane*.

Mr. *Robert Hayward*, at *Iſlington*, to be heard of (as all the Meſſengers are) at the Secretary of Bankrupt's Office.

Mr. *Robert Money*, in *Mitre Court, Fleet Street*.

Mr. *George Surridge*, near *Three Arrow Court*, in *Chancery Lane*.

Mr. *George Murray*, in *Curſitor's Street, Chancery Lane*.

The Meſſengers Duty will appear by their Fees; which are as follow:

For

		£.	s.	d.
Dav. 140.	For ſummoning and attending the Commiſſioners at the firſt Sitting	0	10	0
	For ſummoning and attending the Commiſſioners at every ſubſequent Sitting	0	6	8
	For the Warrant of Seizure, and Duty, and a Tin Box for the Commiſſion	0	5	0

It was apprehended by the Commiſſioners, to whom the Conſideration of their Fees was referred by the late Lord Chancellor *Hardwicke*, in the Year 1740, that the preparing the Warrant of Seizure was the proper Buſineſs of the Clerk to the Commiſſion; but if done by the Meſſenger, it was thought what was charged was reaſonable.

	For the Summons for the Bankrupt to Surrender, and a Duplicate thereof, and ſerving the ſame	0	5	0
	For executing the Warrant of Seizure at one Place, in which is included the keeping Poſſeſſion the Day the Warrant is executed	0	13	4
	For keeping Poſſeſſion of the Bankrupt's Effects, for each Day after the Day of the Seizure to the Day of the Choice of the Aſſignees, incluſive, including what the Meſſenger pays the Man in Poſſeſſion	0	5	0

For

	£.	s.	d.
For executing the Warrrant of Seizure, in any other Houſe or Place beſides the firſt (including the keeping Poſſeſſion the firſt Day) for each Place	0	6	8
For keeping Poſſeſſion of the Bankrupt's Effects, in every ſuch other Houſe or Place beſides the firſt, for each Day after the Day of the Seizure to the Day of the Choice of the Aſſignees, incluſive, including what he pays his Man —	0	3	4
To two Appraiſers, for making an Inventory and Appraiſment of the Goods ſeized, for each Day they are neceſſarily employed in appraiſing the ſame, to each of them —	0	10	6
For a Warrant to ſummon Witneſſes, and attending the Commiſſioners to ſign the Warrant, writing the Summons for the Witneſſes, and ſerving the Witneſſes therewith — —	0	6	8
For writing every Advertiſement for the *Gazette*, and attending the *Gazette* therewith —	0	2	6
Paid to the *Gazette* for each Advertiſement —	0	11	0
Paid for a Room at *Guildhall*, for the Commiſſioners to meet in, and for Pens, Ink and Paper — —	0	3	0

Dav. 141.

If

If in the Execution of any of the Business above-mentioned, the Messengers were obliged to travel at any considerable Distance from *London*, it was apprehended, that besides the above Fees, they ought to be allowed their Horse-hire, and other necessary Expences.

INSTRUCTIONS

FOR

Suing out and Profecuting

A

Commiſſion of BANKRUPTCY.

INSTRUCTIONS

FOR

Suing out and Prosecuting

A

Commission of BANKRUPTCY.

INSTRUCTIONS for ſuing out and proſecuting a Commiſſion of Bankruptcy.

BEFORE a Statute or Commiſſion of Bankruptcy is taken out, it is very adviſeable to be as certain as may be, that the Party againſt whom it is intended to be awarded is a Trader, and indebted 100 *l.* or upwards, or to two 150 *l.* or to three or more 200 *l.* and that he has committed an Act of Bankruptcy, for a Commiſſion is the higheſt Execution of the Law, and the petitioning Creditor may be put to great Expence, if he fails in any of the above Proofs.

As the moſt uſual Debt is that of one Creditor, and the Act of Bankruptcy abſconding or keeping Houſe for fear of being arreſted, agreeable to which, the Precedents in former Treatiſes on this Subject have been drawn, we ſhall ſuppoſe (beſides the above, for the further Inſtructions of the Practiſer) the Debt to be ſeveral, ſworn to by two diſtinct Perſons, and the Act of Bankruptcy lying in Priſon two Months, and that the Party was an actual Priſoner in the *Fleet* Priſon, at the Suit of one of the petitioning Creditors when the Commiſſion iſſued.

The next Step to be taken is Drawing the petitioning Creditors Affidavit of Debt, which may be in the following Form:

R. J. (one of the petitioning Creditors) of *Cheapſide, London*, Linen Draper, and *D. R.* (the other petitioning Creditor) of *Charing-* Affidavit of the petitioning Creditors their Debt.

Charing Croſs, in the County of *Middleſex*, Hoſier, ſeverally make Oath, and firſt this this Deponent *R. J.* for himſelf ſaith, That *J. R.* of, *&c.* (the Bankrupt) is juſtly indebted unto him this Deponent in the Sum of 100*l.* or upwards, for which ſaid Sum or any Part thereof, this Deponent hath received no manner of Satisfaction or Security whatſoever; and this Deponent *D. R.* for himſelf ſaith, That the ſaid *J. R.* is juſtly indebted unto him this Deponent in the Sum of 50*l.* and upwards, for which ſaid Sum or any Part thereof, this Deponent hath received no manner of Satisfaction or Security whatſoever; and both theſe Deponents ſay, That they do believe the ſaid *J. R.* is become a Bankrupt within the Intent and Meaning of ſome or one of the Statutes now in Force concerning Bankrupts*.

R. J.
D. R. Both ſworn, *&c.*

Take your Client † to the publick Office, and get him ſworn to the above Affidavit before a Maſter in Chancery, then carry him to the Secretary of Bankrupt's Office N°. 21, in *Lincoln's Inn Old Buildings*, where you file the ſaid Affidavit, and your Client executes a Bond to the Lord Chancellor, *&c.* for the Time Being, as it ſhall happen, the Penalty of which Bond is 200*l.* conditioned for finding the Perſon againſt whom the Commiſſion is prayed a Bankrupt; tho' the Secretary's Clerk uſually provides the Bond, Petition and

* *If for a Country Commiſſion*, you *add*; "and ſay that the Commiſſion, when obtained, is intended to be executed at (ſome Country Place) aforeſaid, or within ten Miles of the ſame, and not within 40 Miles of *London*.

† If he lives in the Country, he muſt make an Affidavit before a Maſter Extraordinary there, and get it tranſmitted here, to be produced before, and exhibited by the Commiſſioners at the firſt Meeting; and the Bond muſt be ſent down

and Commiſſion; I ſhall here, for the Information of the Practiſer, inſert a Precedent of each.

to him in the Country to be executed.

Know all Men by theſe Preſents, That we *R. J.* of, &c. and *D. R.* of, &c. are held and firmly bound to the Right Honourable *Robert* Lord *Henley*, Baron of *Grainge* in the County of *Southampton*, Lord High Chancellor of *Great Britain*, in 200*l.* of good and lawful Money of this Kingdom, to be paid to the ſaid Lord Chancellor, or his certain Attorney, his Executors, Adminiſtrators or Aſſigns; which Payment well and truly to be made, we bind ourſelves, and each of us, our and each of our Heirs, Executors and Adminiſtrators, firmly by theſe Preſents, ſealed with our Seals, dated the Day of in the firſt Year of the Reign of our Sovereign Lord *George* III. by the Grace of God, of *Great Britain*, *France* and *Ireland*, King, Defender of the Faith, &c. and in the Year of our Lord 1761.

Bond to be ingroſſed on a ſingle Half Crown Sheet of Paper.

THE Condition of this Obligation is ſuch, That if the above-bound *R. J.* and *D. R.* ſhall prove, as well before the major Part of the Commiſſioners to be appointed in a Commiſſion of Bankrupts, againſt *J. R.* of, &c. *as upon a Trial at Law, in caſe the due iſſuing forth of the ſaid Com-*

miſſion ſhall be conteſted and tried, that the ſaid *J. R.* ſtands juſtly indebted to the ſaid *R. J.* in the Sum of 100*l.* and upwards, and to the ſaid *D. R.* in the Sum of 50*l.* and upwards, and is become Bankrupt within the Meaning of ſome or one of the Statutes concerning Bankrupts, and if the ſaid *R. J.* and *D. R.* ſhall cauſe the Commiſſion to be executed according to the Directions of an Act of Parliament paſſed in the fifth Year of his late Majeſty's Reign, intituled, *An Act to prevent the committing of Frauds by Bankrupts*; * then this Obligation to be void, or elſe to be and remain in full Force and Virtue.

* *If for a Country Commiſſion*, you muſt add here, at (the Place where it is to be executed) or within ten Miles of the ſame, and not within forty Miles of *London*.

Sealed and delivered (being firſt duly ſtamped) in the Preſence of us,
A. X.
B. Z.

R. J. (L. S.)
D. R. (L. S.)

To the Right Honourable Robert *Lord* Henley, *Baron of* Grainge *in the County of* Southampton, *Lord High Chancellor of* Great Britain.

The Form of the Petition to be ingroſſed on a ſingle treble Six-penny Skin of Parchment.

IN all humble Manner complaining, ſhew unto your Lordſhip your Orators *R. J.* of, *&c.* and *D. R.* of, *&c.* as well for themſelves as for all other the Creditors of *J. R.* of, *&c.* That whereas the ſaid *J. R.* uſing and exerciſing the Trade of Merchandize, by Way of Bargaining, Exchange, Bartering,

tering and Chevizance, ſeeking his Trade of Living by Buying and Selling, upon juſt and good Cauſes, for Wares and Merchandizes to him ſold and delivered, and alſo for ready Money to him lent, being indebted to your *(a)* Orators and others his Creditors, in the Sum of 150*l.* and upwards, of late (that is to ſay) about the Month of laſt paſt, did become Bankrupt, within the ſeveral Statutes made againſt Bankrupts, to the Intent to defraud and hinder your ſaid Orators and others his Creditors, of their juſt Debts and Duties to them due and owing (that is to ſay) **Within** the Statute made in the Parliament begun and holden at *Weſtminſter* the ſecond Day of *April* in the thirteenth Year of the Reign of *Elizabeth* late Queen of *England*, concerning Bankrupts; **And within** the Statute made in the Parliament begun and holden at *Weſtminſter* aforeſaid, the nineteenth Day of *March* in the *firſt* Year of the Reign of the late King *James* the *firſt* of *England*, *France* and *Ireland*, and of *Scotland* the ſeven and thirtieth, intituled, *An Act for the better Relief of Creditors againſt ſuch as ſhall become Bankrupts*; **And alſo within** the Statute made in the Parliament begun and holden at *Weſtminſter* aforeſaid the nineteenth Day of *February* in the *one* and *twentieth* Year of the Reign of the ſaid late King *James* the *firſt* of *England*, *France* and *Ireland*, and of *Scotland* the ſeven and fiftieth, intituled, *An Act for the further Deſcription of a Bankrupt and Relief of Creditors, againſt ſuch as ſhall become Bankrupts, and for inflicting Corporal Puniſhments upon the Bankrupts*

(a) If the Petition is by one Creditor, you ſay thus, "Being indebted to your Orator in the Sum of 100*l.* and upwards;" If three, "200*l.* and upwards," and if in Partnerſhip, "To your Orators as Partners."

in ſome Special Caſes: **And alſo within** the Statute made in the fifth Year of the Reign of his late Majeſty King *George* the Second, intituled, *An Act to prevent the committing of Frauds by Bankrupts*, or within ſome or one of them: **In tender Conſideration** whereof **may it pleaſe** your Lordſhip to grant unto your Orators his Majeſty's moſt Gracious Commiſſion, to be directed to ſuch and ſo many wiſe, honeſt and diſcreet Perſons, as to your Lordſhip ſhall ſeem meet; authorizing them thereby not only concerning the ſaid Bankrupt, his Body, Lands, Tenements, Freehold and Cuſtomary Goods, Debts, and other Things whatſoever, but alſo concerning all other Perſons, who by Concealment, Claim, or otherwiſe, do or ſhall offend touching the Premiſſes, or any Part thereof, contrary to the true Intent and Meaning of the ſaid Statutes, **To do** and execute all and every Thing and Things whatſoever, as well for and towards Satisfaction and Payment of the ſaid Creditors, as towards and for all other Intents and Purpoſes, according to the Ordinance and Proviſion of the ſame Statutes, and of any other Statutes in Force concerning Bankrupts. And your Orators ſhall ever pray, and ſo forth.

Day of 1760.

Let a Commiſſion iſſue as prayed, and be directed to *R. S. T. N. R. D. M. W.* Eſqrs. and *R. W.* Gentleman. } *Hindley*, Deputy.

Henley, C. S.

* *GEORGE*

* *GEORGE* the Third, by the Grace of God of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, and ſo forth: To our truſty and well-beloved † *R. S. T. N. R. D. M. W.* Eſqrs. and *R. W.* Gentleman, Greeting. Whereas we are informed that *J. R.* of, *&c.* uſing and exerciſing the Trade of Merchandize, by way of Bargaining, Exchange, Bartering and Cheviſance, ſeeking his Trade and Living, by buying and ſelling, about ſince did become Bankrupt within the ſeveral Statutes made againſt Bankrupts, to the Intent to defraud and hinder *R. J.* of, *&c.* and *D. R.* of, *&c.* and others his Creditors, of their juſt Debts and Duties to them due and owing, We minding the due Execution as well of the Statute touching Orders for Bankrupts, made in the Parliament begun and holden at *Weſtminſter* the *ſecond* Day of *April* in the thirteenth Year of the Reign of *Elizabeth*, late Queen of *England*, made and provided, as of the Statute made in the Parliament begun and holden at *Weſtminſter* aforeſaid the *nineteenth* Day of *March* in the *firſt* Year of the Reign

The Commiſſion to be engroſſed on a treble Six-penny Skin of Parchment.

* If it is to be executed in *London*, the Lord Keeper, *&c.* names the Commiſſioners; if in the Country, the petitioning Creditor names them; and in ſuch Caſe it is proper to make an Affidavit that the Commiſſion is to be executed in the Country, naming the Place, which ought to be 20, or at leaſt 10 Miles from *London*; and the Commiſſioners Names are to be inſerted at the Bottom of the Affidavit.

† If it be a Country Commiſſion, the Names, Places of Abode of the Commiſſioners are inſerted.

of the late King *James* the *firſt* of *England*, *France* and *Ireland*, and of *Scotland* the *ſeven* and *thirtieth*, intituled, *An Act for better Relief of Creditors againſt ſuch as ſhall become Bankrupts*: And alſo the Statute made in the Parliament begun and holden at *Weſtminſter* aforeſaid, the nineteenth Day of *February* in the *one* and *twentieth* Year of the Reign of the ſaid late King *James* the *firſt* of *England*, *France* and *Ireland*, and of *Scotland* the ſeven and fiftieth, intituled, *An Act for the further Deſcription of a Bankrupt, and Relief of Creditors againſt ſuch as ſhall become Bankrupts*; *and for inflicting Corporal Puniſhments upon the Bankrupts in ſome Special Caſes*: And alſo the Statute made in the Parliament begun and holden at *Weſtminſter* the ninth Day of *October* in the firſt Year of the Reign of *George* the *Second*, late King of *England*, intituled, *An Act to prevent the committing of Frauds by Bankrupts*: Upon Truſt of the Wiſdom, Fidelity, Diligence and provident Circumſpection which we have conceived in you, do by theſe Preſents name, aſſign, appoint, conſtitute and ordain you our Special Commiſſioners, Hereby giving full Power and Authority unto you, four or three of you, to proceed according to the Statutes, and all other Statutes in Force concerning Bankrupts, not only concerning the ſaid Bankrupt, his Body, Lands, Tenements, Freehold and Cuſtomary, Goods, Debts, and other Things whatſoever; but alſo concerning all other Perſons, who by Concealment, Claim, or otherwiſe, do, or ſhall offend, touching the Premiſſes, or any Part thereof, contrary

contrary to the true Intent and Meaning of the ſaid Statutes; **And to do and** execute all and every Thing and Things whatſoever, as well for and towards Satisfaction and Payment of the ſaid Creditors, as towards and for all other Intents and Purpoſes, according to the Ordinance and Proviſion of the ſame Statutes, **Willing** and commanding you, four, or three of you, to proceed to the Execution and Accompliſhment of this our Commiſſion, according to the true Intent and Meaning of the ſame Statutes, with all Diligence and Effect. **Witneſs** Ourſelf at *Weſtminſter* the Day of in the firſt Year of our Reign.

J. Yorke.

Having got the Commiſſion, (or indeed before, if neceſſary) you muſt apply to one of the Meſſengers (a Liſt of whom and alſo of their Places of Abode, you will find by looking into *Chap.* 8. of this Work) to ſummon three of the Commiſſioners to whom your Commiſſion happens to be directed, to meet at any Tavern, Coffee-Houſe, or other Place, as beſt ſuits your own and your Clients Conveniency.

Firſt Meeting.

THE firſt Thing to be done at this Meeting is, for the Commiſſioners to qualify themſelves, which they do by two of them adminiſtering to each other the Oath preſcribed by 5 *Geo.* 2. *c.* 30. *ſect.* 43. which ſee in *Chap.* 8. of this Work, and *p.* 62.

A Memorial whereof they muſt ſign, to be kept among the Proceedings under the Commiſſion; which Proceedings ſhould be wrote fair, large and wide, (to give Room for Amendments and Interlineations) on brief Paper, with a Quarter Margin for the Commiſſioners to ſet their Names in; beginning a freſh Sheet at each Date, or new Proceeding, except the Depoſitions of Creditors Debts, three of which may be wrote on one Sheet. The Title of which Proceedings generally runs thus:

> Examinations of Witneſſes, Depoſitions, and other Proceedings had and taken under, and by virtue of, a Commiſſion of Bankrupt awarded and iſſued againſt *J. R.* of, *&c.* directed to *R. S. T. N. R. D. M. W.* Eſqrs. and *R. W.* Gentleman, bearing Date at *Weſtminſter* the Day of in the firſt Year of the Reign of our Sovereign Lord *George* the Third, by the Grace of God of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, and ſo forth.

At the Rolls *Coffee-Houſe in* Chancery Lane, London, *the Day of* 1760.

* *BE it Remembred*, that we whoſe Names are hereunto ſubſcribed, being the major Part of the Commiſſioners named and authorized in and by the above Commiſſion of Bankrupt awarded and iſſued againſt *J. R.* of, *&c.* did before we began to put the ſaid Commiſſion in Execution, ſeverally adminiſter to each other, and take the Oath of a Commiſſioner appointed by an Act of Parliament made in the fifth Year of the Reign of his late Majeſty King *George* the Second, intituled, "An Act to prevent the committing of Frauds by Bankrupts," according to the Directions of the ſaid Act. Memorial of the Commiſſioners taking the Oaths.

Witneſs *R. R.* Clerk to the ſaid Commiſſion.

R. S.
T. N.
R. D.

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* Various is the Wording of theſe Memorandums, but the Practiſer may depend on the above, having been approved by Experience, who ought to be prepared with them at every Meeting, which he may now eaſily be, for the Stationers ſell printed Forms ſuitable to almoſt all Caſes; the Commiſſioners ſign them ſometimes all at the Bottom, but commonly one at the Top, one in the Middle, and the Third at Bottom; the proper Method of ſigning is here obſerved throughout the Proceedings.

In caſe you cannot prevail on the Witneſſes to attend in order to prove the Trading or Act of Bankruptcy, you muſt get the following Warrant from the Commiſſioners, *viz.*

Warrant for ſummoning Witneſſes.

BY virtue of his Majeſty's Commiſſion under the *Great Seal of Great Britain*, grounded upon the ſeveral Statutes made concerning Bankrupts, awarded againſt *J. R.* of, &c. directed to us the major Part of the Commiſſioners therein named, who have hereunto ſet our Names, and to others. Theſe are to will and require you and every of you, to whom this our Warrant is directed, perſonally to be and appear before Us the ſaid Commiſſioners, on Sight thereof (or at any particular Hour or Day) at the *Rolls* Coffee Houſe in *Chancery Lane*, then and there to be examined by Us, by virtue of the ſaid Commiſſion, and the ſeveral Statutes therein mentioned. And hereof you are not to fail at your Peril. Given under our Hands this Day of 1760.

R. S.
T. N.
R. D.

To (the Names of the Witneſſes.)

This Warrant the Meſſenger will ſerve on the Parties, by giving or leaving them a Copy; and unleſs they come before the Commiſſioners *immediately*, (if the Warrant requires them ſo to do) they will order them to ſtand committed, for which Purpoſe it will be neceſſary to execute a Warrant, which may be as follows:

Whereas

WHEREAS his Majeſty's Commiſſion under the Great Seal of *Great Britain* bearing Date the Day of laſt paſt, at *Weſtminſter*, grounded on the ſeveral Statutes concerning Bankrupts, hath been awarded and iſſued againſt *J. R.* of, *&c.* directed to us who have hereunto ſet our Seals, and ſubſcribed our Names, and to *M. W.* and *R. W.* Gentlemen, and we being the major Part of the Commiſſioners therein named, (one whereof is of the *Quorum*) having taken upon us the Execution of the ſaid Commiſſion; and it appearing to us that the Act of Bankruptcy intended to be proved againſt the ſaid *J. R.* is his lying in Priſon two Months upon an Arreſt for Debt; and that *J. W.* Officer to the Sheriff of *Middleſex*, was the Perſon who arreſted the ſaid *J. R.* on which Arreſt the ſaid *J. R.* lay in Priſon two Months as aforeſaid; and that the ſaid *J. W.* was duly ſummoned to appear before us, but hath made Default, in Contempt of our Authority, and of the Statutes, and alſo of the Commiſſion aforeſaid, and the Authority thereby to us given; theſe are therefore to will, require and authorize you, and every of you, immediately upon Receipt hereof, to apprehend, arreſt, and take into your Cuſtody the Body of the ſaid *J. W.* and him ſafely to convey to his Majeſty's Gaol of *Newgate*, and him there to deliver to the Keeper of the ſaid Gaol, who is hereby required and authorized by virtue of the ſaid Commiſſion and Statutes aforeſaid, to receive

A Warrant to apprehend and commit a Perſon to Gaol, who refuſed to attend, in order to give Evidence relative to the Act of Bankruptcy.

ceive the ſaid *J. W.* into his Cuſtody, and him ſafely to keep and detain without Bail or Mainprize, until he ſhall ſubmit himſelf to be examined according to the true Intent of the Statutes, and be thence delivered by due Courſe of Law; and for your ſo doing, this ſhall be your ſufficient Warrant, given under our Hands and Seals the Day of in the Year of our Lord 1760.

To (the Meſſengers Men, or any Perſons the Commiſſioners think proper to direct it;) and alſo to *Richard Akerman*, Keeper of his Majeſty's Gaol of *Newgate*.

R. S. (L. S.)
T. N. (L. S.)
R. D. (L. S.)

At, &c. as before.

Depoſition of the petitioning Creditor's Debt. *Jur.* R. S.

* *R. J.* of, *&c.* being ſworn and examined the Day and Year above-mentioned, upon his Oath ſaith, That *J. R.* of, *&c.* the Perſon againſt whom a Commiſſion of Bank-

* It is uſual to place the Creditor's Debts in Figures in the Margin (as in this Depoſition) being convenient to refer to when their Debts are wanted, either to compute the Value for a Bankrupt's Certificate, or any other Occaſion, and likewiſe to write *Jur.* oppoſite to each Depoſition, which is very proper and neceſſary, when there are a great Number of Creditors and Depoſitions, that the Commiſſioners may ſee they have ſworn the Creditors to ſuch Depoſitions as have the above *Jur.* to them, or elſe they might very eaſily ſign ſome to which the Creditors had never been ſworn.

rupt

rupt is awarded and iſſued, was before the Date and ſuing forth of the ſaid Commiſſion, and ſtill is juſtly indebted to him this * Deponent in the Sum of 100 *l.* and upwards, for Goods ſold and delivered by this Deponent to the ſaid *J. R.* for which or any Part thereof this Deponent hath received no Satisfaction or Security whatſoever. T. N. 100 *l.* R. D.

D. R. of *&c.* (as above for 50 *l.* and upwards).

If the petitioning Creditors cannot attend this Meeting to make the above Depoſitions of their Debts, you muſt get an Office Copy of their Affidavit from the Secretary of Bankrupt's Office, which muſt be exhibited by the Commiſſioners by Under-writing it thus:

Day of 1760.

Exhibited to us under a Commiſſion againſt *J. R.*

R. S.
T. N.
R. D.

At, &c.

T. W. of, *&c.* (any Perſon who can prove *J. R.*'s Trading) being duly ſworn and examined the Day and Year above-mentioned, upon his Oath ſaith, that he hath known *J. R.* the Perſon againſt whom a Commiſ- Depoſition of the Trading. R. S.

* Or Examinant.

ſion

T. N. ſion of Bankrupt is awarded and iſſued for Years laſt paſt, during all which Time the ſaid *J. R.* hath carried on the Trade of a *Printſeller*, in buying and ſelling of Prints, and other Commodities, and thereby endeavoured to get his Livelihood
R. D. as others of the ſame Trade uſually do.

T. W.

At, &c.

Depoſition of the Sheriff's Officer having arreſted the Perſon againſt whom the Commiſſion is prayed.

J. W. Officer to the Sheriff of *Middleſex*, being ſworn and examined the Day and Year above-mentioned, upon his Oath ſaith, That on the Day of he arreſted *J. R.* againſt whom a Commiſſion *of Bankruptcy is awarded and iſſued*, by virtue of and detained him in his Cuſtody until the Day of next following,
R. S. when he this Examinant, in Obedience to his Majeſty's Writ of *Habeas Corpus cum Cauſa*, directed to the ſaid Sheriff of *Middleſex*, did conduct the Body of the ſaid *J. R.* before Sir *Edward Clive*, Knt. one of the
T. N. King's Juſtices of the Bench, at his Houſe in *Great Ormond Street* in the ſaid County of *Middleſex*, according to the Command of the ſaid Writ, which ſaid Juſtice did then and there receive from him this Examinant, the Body of the ſaid *J. R.* and did commit him to the Cuſtody of the Warden of the
R. D. *Fleet*.

J. W.

At,

At, &c.

D. H. of, *&c.* Gentleman, who executes the Office of Clerk of the Papers of the *Fleet* Priſon for *John Eyles*, Eſq; *Warden* of the ſaid Priſon, being ſworn and examined the Day and Year above mentioned, upon his Oath ſaith, That *J. R.* the Perſon (as this Deponent is informed and believes) againſt whom a Commiſſion of Bankrupt hath been awarded and iſſued, was on the Day of committed to his Majeſty's Priſon of the *Fleet*, by the Hon. Sir *Edward Clive*, Knt. one of the Juſtices of his Majeſty's Court of *Common Pleas* at *Weſtminſter*, upon a Writ of *Habeas cum Cauſa*, directed to the Sheriff of *Middleſex*, who certified and returned to the ſaid Writ, that the ſaid *J. R.* in the ſaid Writ named, was on the Day of in the Year of his late Majeſty's Reign taken and *detained by him the ſaid Sheriff by virtue of a Writ of* to anſwer *R. J.* of a Plea of Treſpaſs upon the Caſe to the Damage of the ſaid *R. J.* of 200*l.* which ſaid *J. R.* ſo taken and detained as aforeſaid, is, as this Deponent is informed and believes, the ſame Perſon againſt whom the aforeſaid Commiſſion is awarded: And this Examinant further ſaith, That the ſaid *J. R.* hath ever ſince the Day of his ſaid Commitment to the Priſon of the *Fleet* aforeſaid, remained and continued a Priſoner therein, at the Suit of the ſaid *R. J.* and

Depoſition of the Deputy Clerk of the Papers of the *Fleet* Priſon, of the Perſon againſt whom, *&c.* being in the Cuſtody of the *Warden* of the ſaid Priſon.

R. S.

T. N.

R. D.

now is a Priſoner there, charged in Manner as aforeſaid.

D. H.

At, &c.

Memorandum of the Commiſſioners declaring the Party a Bankrupt.

WE whoſe Names are hereunto ſubſcribed, being the major Part of the Commiſſioners named and authorized in and by a certain Commiſſion of Bankrupt awarded and iſſued againſt *J. R.* of, *&c.* bearing Date the Day of in the Year of his preſent Majeſty's Reign, having begun to put the ſaid Commiſſion in Execution, upon Examination of Witneſſes upon Oath taken before us, do find that the ſaid *J. R.* did, before the Date and ſuing forth of the ſaid Commiſſion, become a Bankrupt within the true Intent and Meaning of the ſeveral Statutes made concerning Bankrupts, and now in Force, ſome or one of them, and we do accordingly adjudge and declare the ſaid *J. R.* a Bankrupt. Witneſs our Hands the Day of 1760.

Witneſs *R. S.*
R. R. *T. N.*
R. D.

After the Commiſſioners have declared the Party a Bankrupt, they make out a Warrant of Seizure of his Effects, and of Protection for his Perſon.

WHEREAS

WHEREAS his Majeſty's Commiſſion under the Great Seal of *Great Britain*, grounded upon the ſeveral Statutes made concerning Bankrupts, bearing Date at *Weſtminſter* the ſame Day with this our Warrant, hath been awarded againſt *J. R.* of, *&c.* directed unto us, who have hereunto ſet our Hands and Seals, together with *M. W.* and *R. W.* Gentlemen; and we being the major Part of the Commiſſioners named and authorized by virtue of the ſaid Commiſſion, having begun to put the ſaid Commiſſion in Execution, upon due Examination of Witneſſes, and other good Proof upon Oath, before us taken, have found that he the ſaid *J. R.* did for ſeveral Years laſt paſt, uſe and exerciſe the Trade of a Printſeller, in buying of Prints, and in ſelling the ſame in the way of his Trade aforeſaid, and have alſo found, that he the ſaid *J. R.* by Reaſon of ſuch his Dealing, became indebted to *R. J.* of, *&c.* and *D. R.* of, *&c.* in the Sum of 150*l.* and being ſo indebted as aforeſaid, he the ſaid *J. R.* became Bankrupt to all Intents and Purpoſes, within the true Intent and Meaning of the ſeveral Statutes made againſt Bankrupts, ſome or one of them, before the Date and ſuing forth of the ſaid Commiſſion; **Theſe** are therefore, by virtue of the ſaid Commiſſion, and the ſeveral Statutes therein mentioned, to will and require, authorize and impower you, and every of you, to whom this our Warrant is directed, forthwith to enter into and open the Houſe and Houſes of him the ſaid *J. R.* and alſo into

A Warrant of Seizure.

R. (L. S.) S.

T. (L. S.) N.

all other Place and Places belonging to him the ſaid *J. R.* where any of his Goods are, or are ſuſpected to be, and there ſeize all the ready Money, Jewels, Plate, Houſhold Stuff, Goods, Merchandizes, Books of Account, and all other Things whatſoever, belonging to him the ſaid *J. R.* And ſuch Things as you ſhall ſo ſeize, you ſhall cauſe to be inventoried, and appraiſed by honeſt Men of Skill and Judgment, and the ſame you ſhall return to us with all convenient Speed; and what you ſhall ſo ſeize, you ſhall ſafely detain and keep in your Poſſeſſion, until we ſhall give you Order for the Diſpoſal thereof; and in caſe of Reſiſtance, or of not having the Key or Keys of any Door or Lock belonging to any Place or Places of him the ſaid *J. R.* where any of his Goods are, or are ſuſpected to be, you ſhall break open, or cauſe the ſame to be broken open, for the better Execution of this our Warrant. Given under our Hands
R. (L. S.) D. and Seals this Day of in the Year of our Lord 1760.

To *William Cheſſyre*, our Meſſenger, and to all Mayors, Bailiffs, Conſtables, Headboroughs, and all other his Majeſty's loving Subjects, whom we require to be aiding and aſſiſting in the Execution of this our Warrant, as Occaſion ſhall require.

WHEREAS

A Warrant of Protection for Bankrupt's Perſon.

WHEREAS a Commiſſion of Bankrupt on the Day of One thouſand ſeven hundred and iſſued under the Great Seal of *Great Britain*, againſt *J. R.* of, *&c.* **and whereas** the major Part of the Commiſſioners in the ſaid Commiſſion named and authorized, have declared you to be a Bankrupt; we the ſaid Commiſſioners do hereby ſummons and require you the ſaid *J. R.* perſonally to be and appear before the Commiſſioners in the ſaid Commiſſion named, or the major Part of them, on the * Day of Inſtant, at *Ten* in the Morning, and on the and Days of next, at Four o'Clock in the Afternoon, at *Guildhall*, *London*, then and there to be examined, and to make a full and true Diſcovery and Diſcloſure of all your Eſtate and Effects, according to the Directions of the Acts of Parliament now in Force concerning Bankrupts, and particularly the Act paſſed in the fifth Year of the Reign of his late Majeſty King *George* II. intituled, "An Act to prevent the committing "of Frauds by Bankrupts;" and herein fail not, at your Peril. Given under our Hands this Day of 17

* The Days appointed by the Commiſſioners in the *Gazette*.

To *J. R.* the Bankrupt.

R. S.
T. N.
R. D.

As ſoon as the Bankrupt receives the above Warrant of Protection, it is prudent for him

to ſurrender himſelf, for two Reaſons: One, to ſhew his Willingneſs to comply with the Commiſſion; the other, to ſecure his Perſon from Arreſt and Impriſonment, till the Time of his laſt Examination, whether within the forty-two Days, or the further Time allowed him by the Act of Parliament for finiſhing his Examination, being * forty-nine Days. But ſee *Chap.* 18. of this Work.

Warrant to the Warden of the *Fleet* Priſon, to bring before the Commiſſioners at *Guildhall*, a Bankrupt, who is upon meſne Proceſs, and not in Execution, to be examined before them.

WHEREAS a Commiſſion of Bankruptcy hath been awarded againſt *J. R.* of, *&c.* directed to us, whoſe Names are ſubſcribed, and to the other Commiſſioners therein named, and he being declared a Bankrupt, and the Day of Inſtant, being one of the Days appointed in the *London Gazette*, for the ſaid *J. R.* to ſurrender himſelf to the ſaid Commiſſioners, and we being informed that the ſaid *J. R.* is in your Cuſtody upon meſne Proceſs, and not in Execution; THESE are therefore to deſire you to bring the Body of the ſaid *J. R.* before us at *Guildhall*, in the City of *London*, on next, being the Day of Inſtant, at four of the Clock in the Afternoon, in order to be examined by us, purſuant to the Act or Acts of Parliament now in force concerning Bankrupts; and this ſhall

* The Act ſays 50 Days, but the Lord Keeper's Order is for 49 Days, becauſe the 50th Day may happen to fall on a *Sunday*.

be

be your Warrant. Given under our Hands this Day of 17.

R. S.
T. N.
R. D.

To the Warden of the *Fleet* Prison, or his Deputy.

The same to the Marshal of the *King's Bench*, or to the Sheriffs of *London* or Sheriff of *Middlesex*, &c.

WHEREAS a Commmission of Bankruptcy is awarded and issued against *J. R.* of, &c. and he being declared a Bankrupt, is hereby required to surrender himself to the Commissioners in the said Commission named, or the major Part of them, on the and of next, and on the of following, at Three o'Clock in the Afternoon of each of the said Days, at *Guildhall, London*, and make a full Discovery and Disclosure of his Estate and Effects; when and where the Creditors are to come prepared to prove their Debts, and at the second Sitting to choose Assignees; and at the * last Sitting the said Bankrupt is required to finish his Examination, and the Creditors are to assent to, or dissent from, the Allowance of his Certificate. All Persons indebted to the said Bankrupt, or that have any of his

The Advertisement to be inserted in the *Gazette*, after a Person is declared a Bankrupt.

* This Sitting must always be on the forty-second Day from the Commissioners Declaration of the Party's being a Bankrupt.

Effects, are not to pay or deliver the ſame, but to whom the Commiſſioners ſhall appoint, but give Notice to † in, *&c.*

† Clerk to the Commiſſion.

Sometimes an Aſſignment is required at this Sitting, as where an Extent is expected on the Bankrupt's Effects, which Aſſignment may be in the following Form.

Temporary Aſſignment to the Meſſenger in order to take Place of an Extent.

THIS Indenture made the Day of in the Year of the Reign of our Sovereign Lord *George* III. by the Grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, and ſo forth, and in the Year of our Lord 176c, Between *R. S. T. N.* and *R. D.* Eſqrs; the major Part of the Commiſſioners named and authorized in and by a Commiſſion of Bankrupt, awarded and iſſued againſt *J. R.* of, *&c.* of the one Part, and *W. C.* (the Meſſenger to the Commiſſion) of *London*, Gent. of the other Part. Whereas a Commiſſion of Bankrupt under the Great Seal of *Great Britain*, bearing Date at *Weſtminſter* the Day of grounded upon the ſeveral Statutes made and now in Force concerning Bankrupts, or ſome of them, hath been awarded and iſſued forth againſt the ſaid *J. R.* directed to the ſaid *R. S. T. N.* and *R. D.* together with *M. W.* and *R. W.* Gentlemen, thereby giving full Power and Authority to the ſaid Commiſſioners, four or three of them, to execute the ſame, as in and by the ſaid Commiſſion, Relation being thereunto had, doth more fully and at large appear: And whereas the major Part of the

the Commiſſioners in the ſaid Commiſſion named and authorized, having begun to put the ſaid Commiſſion into Execution, upon due Examination of Witneſſes, and other good Proofs upon Oath before them had and taken, found, or it otherwiſe appeared to them, that the ſaid *J. R.* for ſeveral Years before the Date and ſuing forth of the ſaid Commiſſion, exerciſed and followed the Trade or Buſineſs of a Printſeller, and ſought and endeavoured to get his Living thereby, as others of the ſame Trade or Buſineſs uſually do; and that he the ſaid *J. R.* before the Date and ſuing forth of the ſaid Commiſſion, became indebted to *R. J.* of, *&c.* and *D. R.* of, *&c.* in the Sum of 150*l.* and upwards, and being ſo indebted, he the ſaid *J. R.* did, in the Judgment of the major Part of the Commiſſioners in the ſaid Commiſſion named, become Bankrupt, to all Intents and Purpoſes, within the true Intent and Meaning of the ſeveral Statutes in the ſaid Commiſſion named, ſome or one of them, and they declared him a Bankrupt accordingly: And whereas the ſaid Commiſſioners, Parties to theſe Preſents, in further Execution of the ſaid Commiſſion, and of the Statutes therein mentioned, have found, or it otherwiſe appears to them, that the ſaid *J. R.* at the Time of his becoming Bankrupt, as aforeſaid, or afterwards, was poſſeſſed of, intereſted in, or intitled to diverſe Goods, Wares, Chattels, and other Things, and that there were alſo divers Debts, Sum and Sums of Money due and owing unto him the ſaid *J. R.* and his Eſtate, from

ſeveral

ſeveral Perſons; **And whereas** the ſaid Commiſſioners Parties hereto, think it neceſſary, for the better preſerving and ſecuring the Eſtate of the ſaid *J. R.* to appoint an Aſſignee *proviſionally* of his Eſtate and Effects, until Choice ſhall be made, by the major Part in Value of the Creditors, of an Aſſignee or Aſſignees of the Eſtate and Effects of the ſaid Bankrupt, purſuant to Notice to be given in the *London Gazette* for that Purpoſe: **Now this Indenture witneſſeth,** That the ſaid Commiſſioners, Parties to theſe Preſents, for the Purpoſe aforeſaid, and in further Execution of the ſaid Commiſſion and of the Statutes therein mentioned, and by Force and Virtue thereof, and for and in Conſideration of the Sum of 5*s.* of lawful Money of *Great Britain*, to them the ſaid Commiſſioners, Parties to theſe Preſents, in Hand paid by the ſaid *W. C.* at or before the Sealing and Delivering of theſe Preſents, the Receipt whereof is hereby acknowledged, and alſo in Conſideration of the Covenants herein after contained, on the Part and Behalf of the ſaid *W. C.* his Executors, Adminiſtrators, and Aſſigns, to be kept done and performed, **Have** ordered, bargained, ſold, diſpoſed, aſſigned, and ſet over, and by theſe Preſents **Do**, as much as in them the ſaid Commiſſioners, Parties to theſe Preſents lie, and they lawfully may, order, bargain, ſell, diſpoſe, aſſign, and ſet over, unto the ſaid *W. C.* the Meſſenger under the ſaid Commiſſion, his Executors, Adminiſtrators, and Aſſigns, all and ſingular the Goods, Wares, Chattels, Debts, Sum and

and Sums of Money, and all the perſonal Eſtate whatſoever of the ſaid *J. R.* of which he was poſſeſſed or intitled unto, or which any other Perſon or Perſons was or were poſſeſſed, **In Truſt** for him at the Time he became a Bankrupt, or at any Time ſince; **To have and to hold**, aſk, demand, ſue for, recover, levy, and receive all and ſingular the Premiſſes hereby aſſigned, or mentioned or intended ſo to be, unto the ſaid *W. C.* his Executors, Adminiſtrators, and Aſſigns, **In Truſt** for the immediate Preſervation thereof, and to and for the Uſe, Benefit and Advantage of all the Creditors of the ſaid *J. R.* who have already ſought, or ſhall hereafter in due Time come in and ſeek Relief under the ſaid Commiſſion, according to the ſeveral Statutes therein mentioned, or ſome or one of them, and to and for no other Uſe, Truſt, Intent or Purpoſe whatſoever; **And** the ſaid *W. C.* doth hereby for himſelf, his Heirs, Executors, and Adminiſtrators, and for every of them, covenant, promiſe, and agree, to and with the ſaid Commiſſioners, Parties to theſe Preſents, their Executors, and Adminiſtrators, and to and with every of them, in Manner and Form following, (that is to ſay) That he the ſaid *W. C.* his Heirs, Executors, or Adminiſtrators, ſome or one of them, ſhall and will, as ſoon as an Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate and Effects ſhall be duly choſen and appointed, purſuant to Notice in the *London Gazette*, and when he ſhall be thereunto required for that Purpoſe, join with the major Part of the Commiſſioners named

named in the ſaid Commiſſion, in the making an Aſſignment of all and ſingular the ſaid Goods, Chattels, Debts, Sum and Sums of Money, Wares and Merchandizes, and all other the Premiſſes herein before mentioned or intended to be hereby aſſigned, unto ſuch Perſon or Perſons who ſhall be duly choſen and appointed to be the Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate; **And** that he the ſaid *W. C.* ſhall and will alſo deliver up all the Eſtate and Effects of the ſaid Bankrupt, as ſhall or may have come to the Hands or Poſſeſſion of him the ſaid *W. C.* or to the Hands or Poſſeſſion of any other Perſon or Perſons, **In Truſt** for him and for his Uſe, unto ſuch Perſon or Perſons as ſhall be duly choſen Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate or Effects, or otherwiſe as the ſaid Commiſſioners ſhall direct or appoint, and that he the ſaid *W. C.* his Heirs, Executors, and Adminiſtrators, ſhall and will, from Time to Time and at all Times hereafter, well and ſufficiently ſave, defend, keep harmleſs, and indemnified, **All** the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, their Heirs, Executors, and Adminiſtrators, and every of them, their and every of their Bodies, Lands, Tenements, Goods, Chattels, and Eſtate whatſoever, of, from and againſt all and all Manner of Action and Actions, Suits, Arreſts, Complaints, Coſts, Damages, and Expences whatſoever, which they or any of them ſhall or may ſuſtain, or be put unto, for or by reaſon or means of this preſent Deed or Aſſignment, or any Act or

Acts

Acts to be done or executed by him the ſaid *W. C.* in purſuance or by virtue of the ſaid Commiſſion or Deed of Aſſignment reſpectively. **In Witneſs** whereof the ſaid Parties to theſe Preſents, have hereunto interchangeably ſet their Hands and Seals the Day and Year firſt above written.

Having ſhewn what Proof is neceſſary to be made, and alſo Precedents thereof, when the Act of Bankruptcy is lying in Priſon two Months, we ſhall now proceed to give a Precedent of the Common Act of Bankruptcy, *viz.* abſconding for fear of being arreſted. The Practiſer will be pleaſed to obſerve, that the ſame fictitious Names will be preſerved throughout.

At, &c.

Another Act of Bankruptcy and Trading proved.

J. H. one of the Servants of *J. R.* of, *&c.* the Perſon againſt whom a Commiſſion of Bankruptcy hath been awarded, and *M. W.* Spinſter, another of the Servants of the ſaid *J. R.* upon their Oaths ſeverally depoſe; and firſt the ſaid *J. H.* upon his Oath ſaith, that the ſaid *J. R.* followed the Trade of a Print-ſeller, at the Sign of in *Fleet Street*, by buying and ſelling of Prints, and thereby ſeeking his Livelihood, as others of the ſame Trade uſually do; and this Deponent farther ſaith, that on *Saturday* Morning laſt the ſaid *J. R.* gave Orders to this Deponent to deny his being at Home, in caſe any of his Creditors ſhould come to his Houſe to inquire for him; and that after this Deponent had received R. S.

ceived ſuch Directions from his ſaid Maſter, one Mr. (a Creditor) about *eleven* of the Clock of the ſame Morning, came to his Maſter's Houſe and inquired of this Deponent for the ſaid *J. R.* and demanded to ſpeak with him, but this Deponent denied his being at Home, and refuſed to let him ſee the ſaid *J. R.* who was then above Stairs in his Chamber, as he believes, purſuant to the Order and Direction by him received from the ſaid *J. R.* this Deponent at the ſame Time knowing that the ſaid Mr. was a Creditor of the ſaid *J. R.* and this Deponent *M. W.* upon her Oath ſaith, that ſhe hath alſo known the ſaid *J. R.* and lived with him for the Space of ſix Years, or thereabouts, and that he ſought his Living by Buying and Selling of Prints, and that about a Week ago the ſaid *J. R.* ordered this Deponent to deny his being at Home, in caſe any of his Creditors ſhould come to inquire for him, notwithſtanding his being really at Home, and more particularly on *Saturday* Morning laſt, about *ſeven* of the Clock, the ſaid *J. R.* ordered this Deponent to deny his being at Home, if any of his Creditors ſhould come to aſk for him, for that he was not able to pay them; and that this Deponent was preſent at about the Hour of *eleven* the ſame Morning, when Mr. a Creditor of her ſaid Maſter (as ſhe is informed, and verily believes) came to the Houſe of the ſaid *J. R.* and aſked this Deponent alſo for her ſaid Maſter, when this Deponent, purſuant to his Direction, denied his being at Home, and refuſed to let him ſee the ſaid

T. N.

J. R.

J. R. and both theſe Deponents, upon their Oath ſay, that the ſaid *J. R.* keeps himſelf above Stairs in his Chamber locked up, for the moſt part, for fear of Arreſts by his Creditors, as he has informed theſe Deponents, and as they verily believe. R. D.

J. H.
M. W.

First

First Sitting at Guildhall.

At, &c.

Memorandum of one of the Commiſſioners taking the Oath, who did not attend at the firſt Meeting.

R. *W.* Gent. one of the Commiſſioners named and authorized in and by a Commiſſion of Bankruptcy awarded againſt *J. R.* of, *&c.* did, before he proceeded to act under the ſaid Commiſſion, take the Oath appointed to be taken by Commiſſioners of Bankrupts, in and by an Act of Parliament made in the fifth Year of the Reign of his late Majeſty King *George* II. intituled, "An "Act to prevent the committing of Frauds "by Bankrupts," according to the Directions of the ſaid Act.

Witneſs. *R. W.*
R. S.
T. N.

At, &c.

A Memorandum at the firſt Sitting where nothing is done.

R. S.

T. N.

R. W.

Memorandum, That the major Part of the Commiſſioners, named and authorized in and by a Commiſſion of Bankrupt. awarded and iſſued againſt *J. R.* of, *&c.* met here this Day, purſuant to Notice in the *London Gazette*, but the ſaid Bankrupt did not appear to ſurrender himſelf purſuant to ſuch Notice, nor any Creditor to prove or claim any Debt under the ſaid Commiſſion.

T. N.

Proof of a Partnerſhip Debt for Goods ſold and delivered.

T. N. (a Creditor) of, *&c.* being ſworn and examined the Day and Year aboveſaid, upon his Oath ſaith, that *J. R.* the Perſon againſt whom the Commiſſion of Bankrupt is awarded and iſſued, was, before the Date and ſuing forth of the ſaid Commiſſion, and ſtill is, juſtly indebted unto this Deponent (and his Partner) in the Sum of 29*l.* 11*s.* 5*d.* for Goods ſold and delivered; for which, or any Part thereof, this Deponent (or his Partner, to his Knowledge or Belief) hath received no Manner of Security or Satisfaction whatſoever. See p. 33.

R. S.

T. N.

R. D.

On a Bill of Exchange.

R. C. (a Creditor) of, *&c.* being ſworn and examined the Day and Year aboveſaid, on his Oath ſaith, that *J. R.* of, *&c.* (the Perſon againſt whom the Commiſſion of Bankrupt is awarded and iſſued) was, before the Date and ſuing forth of the ſaid Commiſſion, and ſtill is juſtly indebted unto this Deponent, in the Sum of 140*l.* on account of a * Bill of Exchange drawn by the ſaid *J. R.* on the Day of laſt, upon Merchants in *Oporto*, for Payment of 500 Millrees to Meſſrs. *A. A.* and Company, thirty Days after Sight, being for Value received of this Deponent; for which Sum, or any Part thereof, this Deponent hath received

R. S.

T. N.

* This Bill and all other Securities ſhould be produced and exhibited at the Time of the Creditor's proving his Debt; but if not, it muſt be produced before ſuch Creditor can receive his Dividend.

no Satisfaction or Security whatſoever, except the ſaid Bill of Exchange, and two more Bills of the like Effect, and the Proteſts for Non-payment and Non-acceptance of the ſaid Bill.

R. D.

R. C.

For Principal and Intereſt on a Bond.

O. N. (a Creditor) of, *&c.* being ſworn and examined the Day and Year above-written, on his Oath ſaith, that *J. R.* of, *&c.* the Perſon againſt whom the Commiſſion is awarded and iſſued, was, before the Date and iſſuing forth of the ſaid Commiſſion, and ſtill is, indebted to this Deponent in the Sum of 435 *l.* or thereabouts, for Principal and Intereſt due to this Deponent, by virtue of one Bond or Obligation bearing Date the Day of 17 , under the Hand and Seal of the ſaid *J. R.* for which Sum of 435 *l.* or any Part thereof, this Deponent hath received no Satisfaction or Security whatſoever, except the ſaid Bond or Obligation.

R. S.

T. N.

R. D.

O. N.

For Horſe-hire.

F. M. (a Creditor) of, *&c.* being ſworn and examined the Day and Year aforeſaid, upon his Oath ſaith, that *J. R.* of, *&c.* the Perſon againſt whom the Commiſſion of Bankrupt is awarded and iſſued, was, before the Date and iſſuing of the ſaid Commiſſion, and ſtill is, juſtly and truly indebted unto this Deponent in the Sum of 16 *l.* for keeping Horſes, and Horſe-hire, due to this Deponent from the ſaid Bankrupt, for which Debt, or

R. S.

T. N.

or any Part thereof, he this Deponent hath received no Security or Satisfaction whatſoever. R. D.

F. M.

———Is juſtly and truly indebted unto him this Deponent in the Sum of 14*l.* for Money lent and advanced by this Deponent to the ſaid *J. R.* for which ſaid Sum of 14*l.* or any Part thereof, this Deponent hath not received any Security or Satisfaction whatſoever, ſave and except a Promiſſory Note under Hand of the ſaid *J. R.* whereby he promiſed to pay to this Deponent on Demand the ſaid Sum of 14*l.* For Money lent. R. S. T. N. Exception of a Promiſſory Note. R. D.

———For Money lent and advanced by this Deponent to the ſaid Bankrupt, and alſo in the Sum of for the * Intereſt thereof, making together the Sum of for which ſaid Sum, *&c.* (as before) ſave and except one Bond bearing Date the Day of entered into by the ſaid *J. R.* to this Deponent in the penal Sum of conditioned for the Payment of unto this Deponent, with lawful Intereſt for the ſame; and alſo except a Warrant of Attorney bearing Date the ſame Day, for confeſſing Judgment on the ſaid Bond in his Majeſty's Court of *Common Pleas* at *Weſtminſter*. For Money lent. R. S. T. N. Except Bond and Warrant of Attorney to confeſs Judgment. R. D.

* See Chap. 17. as to the Allowance of Intereſt.

Exception of a Bond and Judgment on an indorſed Note.

R. S. ——Save and except one Bond bearing Date, *&c.* and alſo ſave and except a Judgment obtained by this Deponent as of *Hilary* Term laſt, on the ſaid Bond in his Majeſty's Court of *King's Bench*, in the Sum of 14 *l.* upon a Promiſſory Note under the Hand of the ſaid Bankrupt, whereby he promiſed to pay to one *C. D.* or Order, three Months T. N. after the Date thereof, the ſaid Sum of 14 *l.* and which ſaid Note is * indorſed by the ſaid *C. D.* to this Deponent, in Conſideration of the Sum of 14 *l.* therefore paid to the ſaid *C. D.* by him this Deponent, for which ſaid Sum, or any Part thereof, this Deponent hath not received any Security or Satisfaction R. D. whatſoever.

Quakers Affirmation.

A B. (a Creditor) of, *&c.* being one of the People called *Quakers*, being examined the Day and Year aboveſaid, on his R. S. ſolemn Affirmation affirmeth, that *J. R.* the Perſon againſt whom, *&c.* was, before the Date and ſuing forth of the ſaid Commiſſion, and ſtill is, juſtly indebted to this Affirmant T. N. in the Sum of on Balance of Accounts for Goods ſold and delivered by this Affirmmant to the ſaid *J. R.* for which ſaid Sum, or any Part thereof, this Affirmant hath not R. D. received any Security or Satisfaction whatſoever.

A. B.

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* An indorſed Note may be proved under ſeveral Commiſſions, till the Party thereby gets ſatisfied.

J. F.

J. F. late of, a Bankrupt, being ſworn and examined upon his Oath, ſaith, that the ſaid *J. R.* the Perſon againſt whom this Commiſſion of Bankruptcy is awarded, was, before the ſuing forth of the ſame, and ſtill is, juſtly and truly indebted to *X. W.* of, *&c.* and *Y. Z.* of, *&c.* as Aſſignees of the Eſtate and Effects of him the ſaid *J. F.* in the Sum of for Goods ſold and delivered to the ſaid *J. R.* by the ſaid *J. F.* before he became a Bankrupt, and of ſuch ſaid Sum of this Deponent hath not received any Part, or any Security, or Satisfaction whatſoever for the ſame, or any Part thereof.

By a Bankrupt on Behalf of his Aſſignees.

R. S.

T. N.

J. T. R. D.

Second Sitting at Guild-hall.

AT this Sitting Aſſignees are * generally choſen, the Solicitor's and Meſſenger's Bill taxed.

For the Balance of an Account.

——And ſtill is juſtly and truly indebted unto him this Deponent, in the Sum of being the Balance of an † Account current between the ſaid Bankrupt and this Deponent, for which ſaid Sum of or any Part thereof, this Deponent hath received no Satisfaction or Security whatſoever, ſave and except three Bills of Exchange, all drawn by the ſaid Bankrupt; one whereof bears Date the Day of 1760. and drawn upon for the Sum of the ſecond bearing Date the ſame Day and Year, and drawn upon the ſame Perſon, and for the like Sum as laſt abovementioned; and the third bearing Date the Day of the ſame Month, and in the ſame Year aforeſaid, and drawn on Meſſrs. for the Sum of

For the Fees of an Attorney or Solicitor.

——And ſtill is juſtly indebted to this Deponent in the Sum of for the

* For by the Deſire and Conſent of the Creditors then preſent, the Choice may be put off, and this Sitting adjourned; but *Quære.*

† The Account and Bills of Exchange muſt be produced and exhibited by the Commiſſioners.

* Atten-

*Attendance, Fees and Money laid out and expended by him this Deponent in the Affairs and Buſineſs of the ſaid *J. R.* for which ſaid Sum of or any Part thereof, this Deponent has received no Manner of Security or Satisfaction whatſoever.

——And ſtill is juſtly indebted to this Deponent in the Sum of for his Work and Labour, in *writing, compiling or compoſing, or tranſlating, or reviſing and correcting for the Preſs, or referring* (the Name of the Work) for which ſaid Sum, or any Part thereof, this Deponent hath received no Manner of Security or Satisfaction whatſoever. For an Author, &c.

——And ſtill is juſtly indebted to this † Examinant and his Partner in the Sum of and upwards, by virtue of a § Judgment recovered by this † Examinant, and the ſaid and his Partners, againſt the ſaid *J. R.* in his Majeſty's Court of *King's Bench* at *Weſtminſter*, in or about Term laſt, for which, or any Part thereof, this † Examinant, or the ſaid On a Judgment by a Partner on Behalf of the Copartnerſhip.

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* The Bill of Fees ſhould be exhibited; and there is certainly no Occaſion (tho' I believe it is ſometimes done) for the Bill to be taxed before the Party is allowed to prove his Debt, it being the Duty of the Aſſignees to do it, if they have any Reaſon to think the Bill unreaſonable.

† Or Deponent.

§ A Copy whereof on treble Sixpenny ſtampt Paper, duly examined by the Original Record at Mr. *Tully*'s Office, ſhould be produced and exhibited.

or his Partners, or either of them, to the Knowledge or Belief of this *Examinant, hath, or have received no Satisfaction or Security whatſoever, ſave the ſaid Judgment.

For divers Sums of Money.

——————Is indebted unto him this Deponent in the Sum of for Goods ſold and delivered by this Deponent to the ſaid Bankrupt, and alſo in the further Sum of for Money lent by this Deponent to the ſaid Bankrupt, and alſo in the Sum of for the Intereſt of thoſe two Sums, and alſo in the further Sum of 12 *l.* for Money paid by this Deponent to and for the Uſe of the ſaid Bankrupt and by his Order, which ſaid ſeveral Sums of Money amount together to the Sum of and of which ſaid Sum of this Deponent hath not received any Part, nor hath this Deponent had or received any Security or Satisfaction for the ſame, or any Part thereof, except one Promiſſory Note, *&c.* and alſo except, *&c.*

If you are not ready to prove a Debt under a Commiſſion, or the Commiſſioners will not admit it, you may enter your Claim before the Commiſſioners, and they will order the Aſſignees to reſerve as much in their Hands as the Proportion of ſuch Claim on the Dividend ſhall amount unto, until ſuch Claim is adjuſted, or on Petition determined by the Court.

* Or Deponent.

A Claim.

MEmorandum, That on the Day and Year, and at the Place above mentioned, *A. B.* of, *&c.* claimed a Debt under the Commiſſion of Bankrupt awarded and iſſued againſt *J. R.* of, *&c.* of 16*l.* to be due from the Bankrupt to (the Perſon for whom the Claim is made) by Note of Hand.

N. B. Debts may be proved and claimed any Time before a Dividend; but a Claim is not ſufficient till Proof is made to intitle the Claimant to a Share of the Dividend.

A General Letter of Attorney under a Commiſſion of a Bankruptcy, to be engroſſed on an Half Crown Stampt Sheet of Paper.

KNOW all Men by theſe Preſents, That I *A. Z.* of, *&c.* one of the Creditors of *J. R.* of, *&c.* againſt whom a Commiſſion of Bankruptcy under the Great Seal of *Great Britain* hath been awarded and iſſued, have made, ordained, conſtituted and appointed, and by theſe Preſents do make, *&c.* of, *&c.* my true and lawful Attorney for me and in my Name, Place and Stead, to appear before the Commiſſioners in and by the ſaid Commiſſion named and authorized, or the major Part of them, at *Guildhall, London*, or elſewhere, at the Days and Times appointed in the *London Gazette* for the Choice of Aſſignees of the Eſtate and Effects of the ſaid *J. R.* and then and there for me, and in my Name, to vote in the Choice of one or more Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate and Effects, as my ſaid Attorney, or the Commiſſioners and Creditors then preſent, ſhall think moſt fit and proper, for the better Management, getting in, and recovering of the

the ſaid Bankrupt's Eſtate and Effects; and alſo for me, and in my Name, and as my Act and Deed, to ſign ſuch Certificate as the Commiſſioners ſhall make, to the Right Hon. the Lord Keeper of the Great Seal of *Great Britain*, purporting, That the ſaid *J. R.* hath conformed himſelf to the Directions of the ſeveral Acts of Parliament now in Force againſt Bankrupts, and particularly to the Act made in the 5th Year of his late Majeſty's Reign, intituled, "An Act to pre-"vent the committing of Frauds by Bank-"rupts;" and thereby ſignify my Conſent that the ſaid *J. R.* ſhall have the Benefit of ſuch Allowances as are given to Bankrupts by the ſaid laſt mentioned Act, and alſo for me, and in my Name, Place and Stead, and to and for my Uſe, to aſk, demand, ſue for and receive, of and from the Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate and Effects, all ſuch Dividend or Dividends as the ſaid Commiſſioners, or the major Part of them ſhall from Time to Time, and at all Times hereafter, order to be made among the Creditors of the ſaid *J. R.* who ſhall have come in and ſought Relief under the ſaid Commiſſion, and ſhall be due, payable, and belonging to me, for, or on Account of my Debt or Sum of Money by me proved under the ſaid Commiſſion; and on Receipt thereof, for me, and in my Name to ſign, ſeal, execute and deliver, all and every ſuch good and ſufficient Receipts, Acquittances, Releaſes and Diſcharges to the ſaid Aſſignee or Aſſignees, as ſhall and may be lawful, fit and convenient to be done,

and

and generally to do all and every ſuch further and other lawful Act and Acts, Deed and Deeds in the Law, for the better executing and diſcharging the Power and Authority hereby given, as fully and amply to all Intents and Purpoſes, as I myſelf might or could do, if perſonally preſent; hereby ratifying, allowing and confirming all and whatſoever my ſaid Attorney ſhall or may lawfully do, or cauſe to be done, in and about the ſaid Premiſſes, for the better executing the Purpoſes aforeſaid, by virtue of theſe Preſents. In Witneſs whereof, I the ſaid *A. Z.* have hereunto ſet my Hand and Seal, this Day of in the Year of our Lord 1760.

A. Z. (*L. S.*)

Sealed and delivered (being firſt duly ſtampt) in the Preſence of

T. D.

T. D. of, *&c.* maketh Oath, That he this Deponent was preſent at the executing of the Letter of Attorney hereunto annexed; and that he did ſee *A. Z.* of, *&c.* ſign, ſeal, and as his Act and Deed deliver the ſaid Letter of Attorney, and that the Name of *A. Z.* thereto ſet, is of the proper Hand-writing of him the ſaid *A. Z.* And this Deponent further ſaith, That the Name *T. D.* thereto ſet as a ſubſcribing Witneſs, is of this Deponent's own Hand-writing.

An Affidavit of the due Execution of the above Letter of Attorney to be engroſſed on a treble Six-penny Sheet of Paper.

N. B.

N. B. In Affidavits ſworn in the Country, and to prove Debts under Commiſſions, and in Letters of Attorney to receive Dividends, &c. the Addition of the Bankrupt muſt be exactly the ſame as in the Commiſſion, and an Affidavit of the due executing ſuch Letters of Attorney, muſt be produced to the Commiſſioners, and the Letters of Attorney too, and exhibited by them.

At, &c.

Memorandum of the Bankrupt's ſurrendering himſelf, and deſiring further Time for his Examination.

BE it remembred, That on the Day, in the Year, and at the Place above-mentioned, *J. R.* the Perſon againſt whom the Commiſſion of Bankruptcy is awarded and iſſued, did ſurrender himſelf before the major Part of the Commiſſioners, in and by the ſaid Commiſſion named and authorized, and did then and there ſubmit himſelf to be examined touching and concerning his Eſtate and Effects, and to conform himſelf in all Things according to the ſeveral Statutes made and now in Force concerning Bankrupts, and eſpecially according to the Statute made in the fifth Year of his late Majeſty's Reign, intituled, "An Act to pre-"vent the committing of Frauds by Bank-"rupts."

R. S.

T. N.

J. R.

And

And the ſaid *J. R.* being, the Day and Year and at the Place aboveſaid, ſworn and examined upon his Oath, ſaith, That he is not at preſent able to make any Diſcloſure and Diſcovery of his Eſtate and Effects, but begs Leave till a further Meeting of the Commiſſioners for that Purpoſe. R. D.

J. R.

Memorandum of his not ſurrendering.

Memorandum, That we, the major Part of the Commiſſioners named and authorized in and by a Commiſſion of Bankrupt awarded and iſſued againſt *J. R.* of, &c. purſuant to Notice in the *London Gazette*, did meet on the Day and Year, and at the Place aboveſaid, and the ſaid Bankrupt did not ſurrender himſelf to us, nor ſend any Excuſe for his not ſo doing. R. S. T. N.

R. D.

At, &c.

Memorandum of the Choice of Aſſignees.

BE it remembred, That this Day being the Day appointed in the *London Gazette*, for the Choice of Aſſignees, by the major Part of the Commiſſioners named and authorized in and by a Commiſſion of Bankruptcy awarded and iſſued againſt *J. R.* late of, &c. We, whoſe Names are here under-written, being the major Part in Value of the Creditors of the ſaid *J. R.* now preſent, whoſe reſpective Debts do amount to 10*l.* and upwards, who have duly proved our Debts under the ſaid Commiſſioners, do chuſe *B. C.* of, &c. and *D. E.* of, &c. to be Aſſignees of the

the Eſtate and Effects of the ſaid *J. R.* and do deſire the Commiſſioners to make an Aſſignment of the ſame accordingly.

We do accept of the ſaid Truſt, and promiſe to execute a Counterpart of the Aſſignment to the Commiſſioners.

(Here the Creditors ſign, and the Aſſignees as Creditors.)

B. C.

D. E.

Meeting

Meeting to execute Aſſignment.

Memorandum of executing Aſſignment.

BE it remembred, That we, *&c.* the major Part of the Commiſſioners in a Commiſſion of Bankrupt awarded and iſſued againſt *J. R.* of, *&c.* named, whoſe Names are hereunto ſubſcribed, met at the Time and Place above-mentioned, and peruſed, examined and executed an Aſſignment of the Eſtate and Effects of the ſaid *J. R.* the Bankrupt, to the Aſſignees choſen under the ſaid Commiſſion, and at the ſame Time taxed and ſettled, (*or aſcertained and allowed*) the * petitioning Creditor's Bill, at the Sum of and the Meſſenger's Bill at the Sum of making together the Sum of

R. S.
T. N.
R. D.

* Some ſay the *Clerk*'s, ſome the *Attorney*'s, ſome the *Solicitor*'s Bill; but the petitioning Creditor's is the Bill mentioned in the Act of Parliament, yet any of the above will do.

The

The petitioning Creditors of J. R. *a Bankrupt, Debtor to* R. R. *for the Coſts of ſuing out and proſecuting a Commiſſion of Bankruptcy againſt the ſaid* J. R.

	£.	s.	d.
*ATTENDING the petitioning Creditors to take their Inſtructions ——	0	6	8
Drawing and engroſſing Affidavit of Debt, Duty and Oath	0	5	0
Bond to Lord Keeper ——	0	5	0
Drawing and engroſſing Petition for Commiſſion ——	1	0	0
Parchment and Duty ——	0	2	0
Paid for Commiſſion at private Seal ——	8	15	6
Fee attending ſuing out Commiſſion ——	1	0	0
Paid Commiſſioners Sitting —	3	0	0
Secretary attending ——	1	0	0
Paid Officer attending to prove the Bankrupt's Arreſt —	1	1	0
Ditto the Clerk of the Papers of the *Fleet* Priſon, attending to prove how long the Bankrupt had been detained in the Cuſtody of the Warden of the *Fleet* ——	1	1	0

*N. B. Put the Dates of the Meetings in the Margin.

Paid

	£.	s.	d.
Paid Commiſſioners Sitting at *Guildhall* ——	3	0	0
Secretary attending — —	1	0	0
Paid Commiſſioners ſecond Sitting	1	0	0
Secretary attending ——	1	0	0
Drawing Aſſignment ——	1	0	0
Ingroſſing and Counterpart —	1	0	0
Parchment and Duty ——	0	8	0
Paid Commiſſioners Sitting —	3	0	0
Secretary attending ——	1	0	0

Day of 1760.

WE whoſe Names are hereunto ſubſcribed, being the major Part of the Commiſſioners named and authorized in the Commiſſion of Bankruptcy awarded againſt *J. R.* having inſpected the above Bill of Charges and Diſburſements, do tax and aſcertain the ſame at the Sum of

And we do hereby direct and order Mr. *B. C.* and Mr. *D. E.* the Aſſignees of the Eſtate and Effects of the ſaid Bankrupt, to pay the ſaid Sum of out of the firſt Money or Effects of the ſaid Bankrupt, that ſhall be got in and received under the ſaid Commiſſion. Witneſs our Hands the Day and Year above-mentioned.

R. S.
T. N.
R. D.

Aſſignment to Aſſignees. **THIS Indenture** made the Day of in the firſt Year of the Reign of our Sovereign Lord *George* the Third, by the Grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, *&c.* and in the Year of our Lord 1760, **Between** *R. S. T. N.* and *R. D.* Eſquires, of the one Part, and *B. C.* of, *&c.* and *D. E.* of, *&c.* of the other Part. **Whereas** his Majeſty's Commiſſion under the Great Seal of *Great Britain*, grounded upon the ſeveral Statutes therein mentioned concerning Bankrupts, bearing Date at *Weſtminſter* the Day of laſt, hath been awarded and iſſued againſt *J. R.* of, *&c.* directed unto the ſaid *R. S. T. N.* and *R. D.* together with *M. W.* and *R. W.* Gentlemen, thereby giving unto them, four or three of them, full Power and Authority to execute the ſame, as in and by the ſaid Commiſſion, Relation being thereunto had, more fully may appear: **And whereas** the major Part of the Commiſſioners in and by the ſaid Commiſſion authorized, having begun to put the ſaid Commiſſion into Execution, upon due Examination of Witneſſes, and other good Proofs upon Oath before them had and taken, have found, or it otherwiſe appeared to them, that he the ſaid *J. R.* for Years laſt paſt, had carried on the Trade of a Printſeller in buying and ſelling of Prints, Maps, and other Commodities, and thereby endeavoured to get his Livelihood, as others of the ſame Trade uſually do, and that the ſaid *J. R.* ſo ſeeking and endeavouring to get

get his Livelihood as aforeſaid, did become indebted unto *D. R.* of, *&c.* and *R. J.* of, *&c.* in the Sum of 150 *l.* and upwards, and being ſo indebted as aforeſaid, he the ſaid *J. R.* did, before the Date and ſuing forth of the ſaid Commiſſion, in the Judgment of the major Part of the ſaid Commiſſioners become Bankrupt to all Intents and Purpoſes within the true Intent and Meaning of the ſeveral Statutes in the ſaid Commiſſion mentioned, ſome or one of them: **And whereas** the major Part of the ſaid Commiſſioners, in and by the ſaid Commiſſion authorized, have by Examination of Witneſſes upon Oath and otherwiſe, found, or it did otherwiſe appear unto them, that the ſaid *J. R.* at the Time and ſince he became Bankrupt as aforeſaid, was poſſeſſed of, intereſted in, and intitled unto divers Goods, Chattels, Wares, Merchandizes, Houſhold Stuff, Implements and Utenſils in Trade, Debts and Sums of Money to him due and owing in Trade and otherwiſe: **And whereas** at a Meeting at *Guildhall*, *London*, of the major Part of the ſaid Commiſſioners, purſuant to Notice for that Purpoſe given in the *London Gazette*, the major Part of the Creditors in Value of the ſaid *J. R.* had proved their Debts, and whoſe Debts did reſpectively amount to the Sum of ten Pounds and upwards, did purſuant to the Power and Authority to them given in and by an Act of Parliament paſſed in the fifth Year of his late Majeſty's Reign, intituled, "An Act to prevent the committing of Frauds by Bankrupts," nominate and chuſe the ſaid *B. C.* and *D. E.* to be Aſſignees of

the Eſtate and Effects of the ſaid ſaid *J. R.* and did requeſt the Commiſſioners to make an Aſſignment thereof to him accordingly: **Now this Indenture witneſſeth,** That the ſaid Commiſſioners, Parties to theſe Preſents, in further Execution of the ſaid Commiſſion, and by Force and Virtue thereof, and in purſuance of the ſame, and of the Statutes therein mentioned, and for and in Conſideration of the Covenants hereafter in theſe Preſents contained, on the Part and Behalf of the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators and Aſſigns, covenanted and agreed to be done, kept and performed, **have** ordered, bargained, ſold, aſſigned and ſet over, and by theſe Preſents **Do,** as much as in them the ſaid Commiſſioners, Parties to theſe Preſents, lieth, and they lawfully may, order, bargain, ſell, aſſign and ſet over, unto the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators and Aſſigns, all and ſingular the Goods, Chattels, Wares and Merchandizes, Houſhold Stuff, Implements, Utenſils and Stock in Trade, and alſo all and every the Debt and Debts, Sum and Sums of Money, Rights and Credits, and other the Eſtate, Effects and Things whatſoever, which at the Time of the ſaid *J. R.* his becoming Bankrupt as aforeſaid, or at any Time ſince, were or are any ways due, owing or belonging to his Eſtate, either in his own Right, or jointly with any Perſon or Perſons whomſoever, and all the Eſtate, Right, Title, Intereſt, Equity of Redemption, Claim and Demand whatſoever, of him the ſaid *J. R.* of, in or to the ſaid Premiſſes; **To have and to hold** all and ſingular the ſaid Goods, Wares,

Merchandizes, Stock and Utenſils, Debts and Sums of Money, and other Things whatſoever, intended to be hereby aſſigned, and every Part and Parcel thereof, with their and every of their Appurtenances, unto the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators and Aſſigns; **Upon Truſt** nevertheleſs, to ſell and diſpoſe thereof, and to get in and receive the ſaid Debts and Sums of Money, and to pay and apply the Money ariſing thereby, after a Deduction of all neceſſary Coſts and Charges in and about the ſuing forth and proſecuting the ſaid Commiſſion, or any renewed Commiſſion, againſt the ſaid *J. R.* to and amongſt all the Creditors of the ſaid *J. R.* proportionably, as have already or ſhall in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, or any renewed Commiſſion, againſt the ſaid *J. R.* and duly prove and aſcertain their ſeveral and reſpective Debts under the ſame, according to the Directions and Limitations of the ſaid Statutes, and as to the Overplus, if there ſhall be any, after Payment and Satisfaction of all ſuch Debt and Debts, as ſhall or may be proved under the ſaid Commiſſion, or any renewed Commiſſion, againſt the ſaid *J. R.* and the Charges of ſuing forth and proſecuting the ſame; **In Truſt** for the ſaid *J. R.* his Executors, Adminiſtrators and Aſſigns, according to the ſaid Statutes, and the true Intent and Meaning thereof, and to and for no other Uſe, Truſt, Intent or Purpoſe whatſoever; **And** the ſaid *B. C.* and *D. E.* do for themſelves ſeverally and reſpectively, and for their ſeveral and

reſpective Heirs, Executors, Adminiſtrators, and Aſſigns, and for every of them, covenant, promiſe, grant and agree, to and with the ſaid Commiſſioners, Parties to theſe Preſents, their Executors and Adminiſtrators, and to and with every of them, in Manner and Form following, (that is to ſay) that they the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators or Aſſigns, ſhall and will, with all convenient Speed, uſe their beſt Means and Endeavours, by Suit at Law or otherwiſe, to recover, receive, and get into his or their Hands or Poſſeſſion, all and every the Goods and Chattels, Wares and Merchandizes, Stock and Utenſils, Debt and Debts, Sum and Sums of Money, and all other the Eſtate, Effects and Things, and other the Premiſſes hereby aſſigned, or intended ſo to be, and after Poſſeſſion had and obtained thereof, ſhall and will with like convenient Speed, make Sale or other Diſpoſal thereof, for the moſt and beſt Price that may or can be reaſonably had and gotten for the ſame; And alſo that they the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators or Aſſigns, and every of them, ſhall and will from Time to Time and at all Times hereafter, upon every Notice or Requeſt to him or them given for that Purpoſe, account to and with the ſaid Commiſſioners, Parties to theſe Preſents, or the major Part of the Commiſſioners in and by the ſaid Commiſſion named and authorized, or to be named and authorized, by any renewed Commiſſion againſt the ſaid *J. R.* their Executors or Adminiſtrators reſpectively,

ly, at ſuch Times and Places as they ſhall from Time to Time direct and appoint, for and concerning all ſuch Monies, or other Satisfaction, as they the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators or Aſſigns, or any of them, ſhall have gotten in, recovered, received or raiſed, by virtue of theſe Preſents or otherwiſe, by or out of the Eſtate, Effects and Premiſſes of the ſaid *J. R.* hereby aſſigned, and all ſuch Money or other Satisfaction, as upon ſuch Account ſhall appear to be raiſed, obtained or received, ſhall or will upon reaſonable Notice and Requeſt, well and ſufficiently pay or cauſe the ſame to be paid, in ſuch Manner and Form as the major Part of the Commiſſioners named and authorized in and by the ſaid Commiſſion, or to be named and authorized by any renewed Commiſſion againſt the ſaid *J. R.* ſhall, after Deduction of all neceſſary Coſts and Charges, order and direct, to the End that the ſame may be diſtributed, divided, ordered and diſpoſed proportionably, for and towards the Payment and Satisfaction of the Debts due and owing by the ſaid *J. R.* to ſuch of his Creditors who have already ſought, or ſhall hereafter in due Time come in and ſeek Relief under the ſaid Commiſſion, or any renewed Commiſſion, againſt the ſaid *J. R.* and duly prove and aſcertain their ſeveral and reſpective Debts under the ſame, and according to the Limitations and Directions of the ſaid Statute: **And Laſtly,** That the ſaid *B. C.* and *D. E.* their Executors and Adminiſtrators, or ſome of them, ſhall and will, from Time to Time and at all

Times hereafter, well and ſufficiently ſave, defend, keep harmleſs, and indemnified, them the ſaid Commiſſioners in the ſaid Commiſſion named, and every of them, their and every of their Heirs, Executors and Adminiſtrators, his and their Bodies, Lands and Tenements, Goods and Chattels, and every Part thereof, and every of their Officers, Agents, Meſſengers and Servants, who have been by them, or any of them, employed in and about the Execution of the ſaid Commiſſion, of and from all and all Manner of Action and Actions, Suits, Arreſts, Troubles, Coſts, Damages, Charges, and Expences whatſoever, which they, or any of them, ſhall or may pay, ſuffer, ſuſtain, or be put unto, for or by reaſon of this preſent Deed of Aſſignment, or any Act or Acts, Thing or Things whatſoever, lawfully done or executed by them, or any or either of them, about the Eſtate of the ſaid *J. R.* or in the Execution of the ſaid Commiſſion in any wiſe howſoever, or their or any of their lawful Intermedling or Dealings in or about the ſame. **In Witneſs** whereof, the ſaid Parties to theſe Preſents have hereunto interchangeably ſet their Hands and Seals the Day and Year firſt above written.

N. B. That before 5 *Geo.* 2. *c.* 30. there uſed to be a Schedule to this Aſſignment; but by *ſect.* 42. of that Statute, there ſhall be none.

This

THIS Indenture Tripartite, made the Day of in the Year of the Reign of our Sovereign Lord *George* III. by the Grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, *&c.* and in the Year of our Lord 1760, **Between** *W. C.* of *London*, Gentleman, (the Meſſenger to the Commiſſion) of the firſt Part, *R. S. T. N.* and *R. D.* Eſqrs; being the major Part of the Commiſſioners named and authorized in and by a Commiſſion of Bankrupt, awarded and iſſued againſt *J. R.* of, *&c.* of the ſecond Part, *B. C.* of, *&c.* and *D. E.* of, *&c.* of the third Part. **Whereas** a Commiſſion of Bankrupt under the Great Seal of *Great Britain*, bearing Date at *Weſtminſter* the Day of grounded upon the ſeveral Statutes made and now in Force concerning Bankrupts, or ſome of them, hath been awarded and iſſued forth againſt the ſaid *J. R.* directed to the ſaid *R. S. T. N.* and *R. D.* together with *M. W.* and *R. W.* Gentlemen, thereby giving full Power and Authority to the ſaid Commiſſioners, four or three of them, to execute the ſame, as in and by the ſaid Commiſſion, Relation being thereunto had, doth more fully and at large appear: **And whereas** the ſaid *R. S. T. N.* and *R. D.* being the major Part of the ſaid Commiſſioners in the ſaid Commiſſion named and authorized, having begun to put the ſaid Commiſſion into Execution, upon due Examination of Witneſſes, and other good Proofs upon Oath before them had and

Aſſignment to Aſſignees after a Temporary Aſſignment.

and taken, found, or it otherwiſe appeared to them, that the ſaid *J. R.* for ſeveral Years before the Date and ſuing forth of the ſaid Commiſſion, exerciſed and followed the Trade or Buſineſs of a Printſeller, and ſought and endeavoured to get his Living thereby, as others of the ſame Trade or Buſineſs uſually do; and that he the ſaid *J. R.* before the Date and ſuing forth of the ſaid Commiſſion, became indebted to *D. R.* of, *&c.* and *J. R.* of, *&c.* in the Sum of 150*l.* and upwards, and being ſo indebted, he the ſaid *J. R.* did, in the Judgment of the major Part of the Commiſſioners in the ſaid Commiſſion named, become Bankrupt, to all Intents and Purpoſes, within the true Intent and Meaning of the ſeveral Statutes in the ſaid Commiſſion named, ſome or one of them, and they declared him a Bankrupt accordingly: **And whereas** the ſaid Commiſſioners, Parties to theſe Preſents, in further Execution of the ſaid Commiſſion, and of the Statutes therein mentioned, and by virtue of the ſame by Indenture bearing Date the * Day of made between the ſaid *R. S. T. N.* and *R. D.* of the one Part, and the ſaid *W. C.* of the other Part, for the Conſideration therein mentioned, did as much as in them lay, and they lawfully might, order, bargain, ſell, diſpoſe, aſſign and ſet over, unto the ſaid *W. C.* his Executors, Adminiſtrators and Aſſigns, all and ſingular the Goods, Wares and Chattels, Debts, Sum and Sums of Money, and all the perſonal Eſtate whatſoever of the ſaid *J. R.* of which he was poſſeſſed or intitled unto,

* Date of the temporary Aſſignment.

unto, or of which any other Perſon or Perſons was or were poſſeſſed, **In Truſt** for him at the Time he became a Bankrupt, or at any Time ſince; **To hold**, aſk, demand, ſue for, recover, levy, and receive all and ſingular the Premiſſes thereby aſſigned or mentioned, or intended ſo to be, unto the ſaid *W. C.* his Executors, Adminiſtrators and Aſſigns, **In Truſt** for the immediate Preſervation thereof, and to and for the Uſe, Benefit and Advantage of all the Creditors of the ſaid *J. R.* who had then ſought, or ſhould then after in due Time come in and ſeek Relief under the ſaid Commiſſion, according to the ſeveral Statutes therein mentioned, or ſome or one of them, and to and for no other Uſe, Truſt, Intent or Purpoſe whatſoever, as in and by the ſaid recited Indenture, Relation being thereunto had, will and may more fully and at large appear: **And whereas** the ſaid *W. C.* did, in and by the ſaid recited Indenture of Aſſignment, covenant and agree, to and with the ſaid Commiſſioners, Parties thereto, their Executors, and Adminiſtrators, and to and with every of them, that he the ſaid *W. C.* his Executors, or Adminiſtrators, or ſome or one of them, ſhould and would, as ſoon as an Aſſignee or Aſſignees of the Bankrupt's Eſtate and Effects ſhould be duly choſen and appointed, join with the major Part of the Commiſſioners named in the ſaid Commiſſion, in aſſigning all and ſingular the ſaid Goods, Chattels, Debts, Sum and Sums of Money, Wares and Merchandizes, and all other the Premiſſes in the ſaid recited Indenture aſ-

ſigned to him, unto ſuch Perſon or Perſons, who ſhould be duly choſen and appointed to be the Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate and Effects, and that he the ſaid *W. C.* would deliver up all the Eſtate and Effects of the ſaid Bankrupt, as ſhould or might have come to his Hands or Poſſeſſion, or to the Hands or Poſſeſſion of any other Perſon or Perſons, as ſhould be duly choſen Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate or Effects, or otherwiſe, as the ſaid Commiſſioners ſhould direct or appoint, as in and by the ſaid recited Indenture may more at large appear: **And whereas** at a Meeting of the major Part of the Commiſſioners, in and by the ſaid Commiſſion named and authorized, at the *Guildhall* of the City of *London*, this Day of purſuant to Notice in the *London Gazette* for that Purpoſe given, the major Part in Value of the Creditors of the ſaid *J. R.* then preſent, and who had proved their Debts under the ſaid Commiſſion, and whoſe Debts reſpectively amounted to ten Pounds or upwards, did nominate, elect, and chooſe, the ſaid *B. C.* and *D. E.* to be Aſſignees of the Eſtate and Effects of the ſaid *J. R.* and deſired an Aſſignment thereof to be made to them accordingly by the ſaid *W. C.* and the ſaid Commiſſioners: **Now this Indenture witneſſeth**, That the ſaid *W. C.* for and in Conſideration of the Sum of 10*s.* of lawful Money of *Great Britain*, to him in Hand paid by the ſaid *B. C.* and *D. E.* at or before the Sealing and Delivery of theſe Preſents, in purſuance of the above mentioned

Covenant

Covenant in the above recited Indenture mentioned, by the Conſent and Direction of the ſaid Commiſſioners, Parties to theſe Preſents, teſtified by their being Parties to and Sealing and Delivering hereof, **Hath** ordered, bargained, ſold, diſpoſed, aſſigned and ſet over, and by theſe Preſents **Doth** order, bargain, ſell, diſpoſe, aſſign and ſet over, unto the ſaid *B. C.* and *D. E.* their Executors and Adminiſtrators, all and ſingular the Goods, Wares and Chattels, Debts, Sum and Sums, of Money, and all the perſonal Eſtate whatſoever, of the ſaid *J. R.* of which he was poſſeſſed or intitled unto, or which any other Perſon or Perſons was or were poſſeſſed, **In Truſt** for him at the Time he became Bankrupt, or at any Time ſince; and all the Right, Title, Intereſt, Property, Claim and Demand whatſoever, of him the ſaid *W. C.* of, in or to the ſame, or any Part thereof, as Aſſignee of the Eſtate and Effects of the ſaid *J. R.* and the ſaid Commiſſioners, Parties to theſe Preſents, being the major Part of the ſaid Commiſſioners, in and by the ſaid Commiſſion named and authorized, in Conſideration of 5*s.* to them or one of them, in Hand alſo paid by the ſaid *B. C.* and *D. E.* **Have** ratified and confirmed, and by theſe Preſents **Do**, as much as in them lieth, and they lawfully may, ratify and confirm unto the ſaid *B. C.* and *D. E.* all and ſingular the ſaid Goods, Wares and Chattels, Debts, Sum and Sums of Money, and other Things, and all the Eſtate whatſoever and whereſoever, of and belonging to the ſaid *J. R.* herein before ordered, bargained, ſold, diſpoſed, aſſigned

and ſet over by the ſaid *W. C.* Party hereto; **To have and to hold,** aſk, demand, ſue for, recover, levy and receive the ſaid Goods, Wares and Chattels, Debts, Sum and Sums of Money, and other Things, and all other the Effects whatſoever, of or belonging to the ſaid *J. R.* hereby ordered, bargained, ſold, diſpoſed, aſſigned and ſet over, or hereby mentioned or intended ſo to be, unto the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators and Aſſigns, **Upon Truſt,** nevertheleſs (that is to ſay) to and for the Uſe, Benefit and Advantage, of all the Creditors of the ſaid *J. R.* who have already ſought, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, according to the Limitations and Directions of the ſeveral Statutes in that Behalf made and provided, and to and for no other Uſe, Intent or Purpoſe whatſoever; **And** the ſaid *B. C.* and *D. E.* do for themſelves, ſeverally and reſpectively, and for their ſeveral and reſpective Heirs, Executors and Adminiſtrators, covenant, promiſe and agree, to and with the ſaid Commiſſioners, Parties to theſe Preſents, and to and with every of them, by theſe Preſents, that they the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators or Aſſigns, ſhall and will with all convenient Speed, by all lawful and equitable Ways and Means, uſe their utmoſt Endeavours to recover and get in the ſeveral Goods, Wares and Chattels, Debts, Sum and Sums of Money, and all other the Eſtate and Effects of the ſaid *J. R.* and after Poſſeſſion had and obtained

of

of the ſaid Goods, Wares and Chattels, Debts, Sum and Sums of Money, Eſtate and Effects whatſoever, or any Part thereof, ſhall and will ſell and diſpoſe of the ſame, to and for the moſt and beſt Value they can get for the ſame; **And further,** that the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators and Aſſigns, ſhall and will from Time to Time, and at all Times hereafter, upon reaſonable Requeſt and Notice to them given for that Purpoſe, render and give unto the ſaid Commiſſioners, Parties to theſe Preſents, or the major Part of the ſaid Commiſſioners, in and by the ſaid Commiſſion named and authorized, and the major Part of the Commiſſioners to be named in and by any renewed Commiſſion, which may be awarded againſt the ſaid *J. R.* at ſuch Time and Place as they ſhall appoint, a true, juſt and perfect Account in Writing, under the Hands and Seals of the ſaid *B. C.* and *D. E.* their Executors and Adminiſtrators, of what and how much Money and other Satisfaction, they the ſaid *B. C.* and *D. E.* their Executors, and Adminiſtrators, ſhall have had, recovered and received, by virtue or means of this preſent Deed of Aſſignment, or otherwiſe, out of the Eſtate and Effects of the ſaid *J. R.* and ſuch Money or other Satisfaction, as upon ſuch Account ſhall appear to be had, raiſed and received, by the ſaid *B. C.* and *D. E.* their Executors or Adminiſtrators, they the ſaid *B. C.* and *D. E.* their Executors or Adminiſtrators, ſhall and will truly pay or cauſe to be paid, unto them the ſaid Commiſſioners, Parties to theſe Preſents, or

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the major Part of the ſaid Commiſſioners in and by the ſaid Commiſſion named, or to the Commiſſioners to be named in any ſuch renewed Commiſſion, or the major Part of them, or to ſuch Perſon or Perſons as they ſhall appoint, to the End the ſame or other Satisfaction, may be by them the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, or the major Part of them, ordered, diſpoſed, diſtributed and divided, unto and amongſt all and every the Creditors of the ſaid *J. R.* who have already ſought, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, according to the Limitations and Directions of the ſeveral Statutes therein mentioned, proportionably according to the ſeveral Debts owing to them ſeverally and reſpectively from the ſaid *J. R.* And **Laſtly**, the ſaid *B. C.* and *D. E.* do hereby for themſelves ſeverally and reſpectively, and for their ſeveral and reſpective Heirs, Executors and Adminiſtrators, covenant, promiſe and agree, to and with the ſaid Commiſſioners, Parties to theſe Preſents, their Heirs, Executors and Adminiſtrators, that they the ſaid *B. C.* and *D. E.* their Executors and Adminiſtrators, ſhall and will from Time to Time, and at all Times hereafter, well and ſufficiently ſave, defend, keep harmleſs and indemnified, the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, and alſo the ſaid *W. C.* their Executors and Adminiſtrators, and every of them, their and every of their Bodies, Lands, Tenements, Goods,

and

and Chattels, of and touching or concerning all and all Manner of Action and Actions, Suits, Arreſts, Troubles, Coſts, Damages, and Expences whatſoever, which they or any of them ſhall ſuſtain or be put unto, for or by reaſon of this preſent Deed of Aſſignment, or any other Act or Acts, Thing or Things, lawfully done or executed by virtue of the ſaid Commiſſion or the ſaid recited Aſſignment, or their or any of their lawful Intermeddling in any of the Eſtate of the ſaid *J. R.* In Witneſs, &c.

At, &c.

BE it remembred, that on the Day and Year, and at the Place above mentioned, *J. R.* the Perſon againſt whom the Commiſſion of Bankrupt is awarded and iſſued, did again ſurrender himſelf to the major Part of the Commiſſioners in and by the ſaid Commiſſion authorized, purſuant to Notice in the *London Gazette* for that Purpoſe, and being then and there ſworn and examined upon his Oath, ſaith, *That the Paper Writing now by him delivered to the ſaid major Part of the ſaid Commiſſioners marked with the Letter* A, *and ſubſcribed by him, the beſt Account of this Deponent's Eſtate and Effects, which he is at preſent able to make*, and begs further Time for finiſhing his Examination, till the laſt Sitting appointed in the *Gazette* for that Purpoſe.

Memorandum of Bankrupt's ſurrendering himſelf a ſecond Time, making Diſcovery, and deſiring further Time to finiſh his Examination.

R. S.

T. N.

J. R.

R. D.

Meeting to execute Bargain and Sale.

A Deed of Bargain and Sale.

N. B. The Original to be executed by the Commiſſioners, muſt be engroſſed on a 5 s. ſtampt Skin of Parchment, and the Counterpart to be executed by the Aſſignees on an Half Crown Stamp.

THIS Indenture made the Day of in the firſt Year of the Reign of our Sovereign Lord *George* the Third, by the Grace of God, of *Great Britain*, *France* and *Ireland* King, *&c.* and in the Year of our Lord 1760, **Between** *R. S.* Eſq; *T. N.* Eſq; and *R. D.* Gentleman, of the one Part, and *B. C.* of, *&c.* and *D. E.* of, *&c.* of the other Part. **Whereas** his Majeſty's Commiſſion under the Great Seal of *Great Britain*, grounded upon all or ſome of the Statutes made concerning Bankrupts, bearing Date at *Weſtminſter* the Day of this Inſtant, hath been awarded againſt *J. R.* of, *&c.* directed to the ſaid *R. S. T. N.* and *R. D.* together with *M. W.* and *R. W.* Gentlemen, thereby giving unto them, four or three of them, full Power and Authority to execute the ſame, as in and by the ſaid Commiſſion, Relation being thereunto had more fully may appear: **And whereas** the ſaid Commiſſioners, Parties to theſe Preſents, having begun to put the ſaid Commiſſion in Execution, upon due Examination of Witneſſes, and other good Proofs upon Oath before them had and taken, have found, or it otherwiſe appeared unto them, that the ſaid *J. R.* for ſeveral Years laſt paſt, before the Date and ſuing forth of the ſaid Commiſſion, had carried on the Trade of a Printſeller, in buy-

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ing and ſelling Prints, Maps and other Commodities, thereby endeavouring to get his Living, as others of the ſame Trade uſually do, and that he the ſaid *J. R.* by reaſon of ſuch his Trade and Buſineſs, did become juſtly and truly indebted, and ſtill doth owe and ſtand indebted in the Sum of 150*l.* to *D. R.* and *R. J.* (upon whoſe Petition the ſaid Commiſſion iſſued) and that he the ſaid *J. R.* being ſo indebted (in the Judgment of the ſaid Commiſſioners, Parties to theſe Preſents) before the Date and Suing forth of the ſaid Commiſſion, became a Bankrupt, within the true Intent and Meaning of all or ſome or one of the ſeveral Statutes concerning Bankrupts: **And whereas** the major Part of the ſaid Commiſſioners, Parties to theſe Preſents, in further Execution of the ſaid Commiſſion, and by due Examination of Witneſſes upon Oath, found, or it otherwiſe appeared unto them, that the ſaid *J. R.* at the Time or Times he became Bankrupt as aforeſaid, was ſeiſed or intitled unto ſeveral real Eſtates, ſituate, lying and being in, *&c.* (*here deſcribe the Eſtates, and how the Bankrupt became intitled to them*): **Now this Indenture witneſſeth,** That the ſaid Commiſſioners, Parties to theſe Preſents, in further Execution of the ſaid Commiſſion, and by Force and Virtue thereof, and of the Statutes therein mentioned, and for and in Conſideration of the Sum of 5*s.* of lawful Money of *Great Britain*, to them the ſaid Commiſſioners in Hand well and truly paid by the ſaid *B. C.* and *D. E.* at or before the Sealing and Delivery of theſe Preſents, the

Receipt whereof is hereby acknowledged, and alſo in Conſideration of the Covenants and Agreements herein after contained, on the Part and Behalf of the ſaid *B. C.* and *D. E.* their Heirs, Executors, Adminiſtrators and Aſſigns, to be kept and performed, **Have** ordered, granted, bargained and ſold, **And** by theſe Preſents (as much as in them the ſaid Commiſſioners, Parties to theſe Preſents lieth, and they lawfully may) **Do**, order, grant, bargain and ſell, unto them the ſaid *B. C.* and *D. E.* their Heirs and Aſſigns, **All** the ſaid Bankrupt's Meſſuages, *&c.* and alſo all the Eſtate, Right, Title, Intereſt, Uſe, Truſt, Property, Poſſeſſion, Benefit, Equity of Redemption, Claim and Demand whatſoever, which he the ſaid *J. R.* at the Time of his becoming Bankrupt as aforeſaid, had of, in or to all and ſingular the ſaid Meſſuages, *&c.* and all and ſingular other the Premiſſes herein before mentioned, and hereby ordered, granted, bargained and ſold, or mentioned or intended ſo to be, with their and every of their Appurtenances, and alſo all other Meſſuages, Lands, Tenements and Hereditaments whatſoever and whereſoever, which he the ſaid *J. R.* hath purchaſed or obtained for Money, or other Recompence jointly with his Wife, Children or Child, to the only Uſe of him the ſaid *J. R.* and alſo all ſuch Uſe, Eſtate, Intereſt, Right and Title whatſoever, which he the ſaid *J. R.* had of, in, or to any Meſſuages, Lands, Tenements and Hereditaments whatſoever, at the Time he became Bankrupt as aforeſaid, which he could de-

part withal, and all and ſingular other the Premiſſes herein before bargained and ſold, or mentioned, or intended ſo to be; **To have** and **to hold** all and ſingular the ſaid Meſſuages, *&c.* with their and every of their Appurtenances, unto them the ſaid *B. C.* and *D. E.* their Heirs and Aſſigns, to and for the only proper Benefit and Advantage of them the ſaid *B. C.* and *D. E.* their Heirs and Aſſigns, for ever, or according to the ſaid *J. R.*'s Right and Intereſt therein, ſubject to ſuch Mortgage or Mortgages, or other Charges and Incumbrances (if any ſuch there be) as the ſame are legally charged with and liable to; in Truſt nevertheleſs, for the Benefit and Advantage of them the ſaid *B. C.* and *D. E.* and all and every other the Creditors of the ſaid *J. R.* who already have come in and ſought Relief, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, or any renewed Commiſſion againſt the ſaid *J. R.* and duly prove and aſcertain their ſeveral and reſpective Debts under the ſame, according to the Directions and Limitations of the ſaid Statutes; and as to the Overplus, if any ſhall be after Payment, and Satisfaction of all ſuch Debt or Debts as ſhall or may be proved under the ſaid Commiſſion, or any renewed Commiſſion, againſt the ſaid *J. R.* and the Charges of ſuing forth and proſecuting the ſame, in Truſt for the ſaid *J. R.* his Heirs or Aſſigns, according to the Statutes, and the true Intent and Meaning thereof. **And** the ſaid *B. C.* and *D. E.* each of them for himſelf ſeparate and a-part, and for his own

Heirs, Executors and Adminiſtrators, Acts and Deeds only, and not either of them for the other of them, his Heirs, Executors or Adminiſtrators, Acts or Deeds, do hereby ſeverally and reſpectively covenant, promiſe and agree, to and with their and every of their Heirs, Executors and Adminiſtrators, and with the ſaid Commiſſioners Parties hereto, by theſe Preſents in manner following, that is to ſay, That each of them, the ſaid *B. C.* and *D. E.* reſpectively, and their Heirs and Aſſigns, ſhall and will, with all convenient Speed, uſe their beſt Endeavours, by Suits at Law, or otherwiſe, to recover and get Poſſeſſion of the ſaid Meſſuages, *&c.* and ſhall and will, after Recovery and Poſſeſſion had of the ſame, or any Part thereof, make Sale and Diſpoſition thereof, with the like convenient Speed, to and for the moſt Money and beſt Price and Advantage he or they can or may, *bona fide*, obtain for the ſame. **And further**, That the ſaid *B. C.* and *D. E.* their Heirs, Executors and Adminiſtrators, ſhall and will, from Time to Time, and at all Times hereafter, upon reaſonable Requeſt or Notice to them given for that Purpoſe, under the Hands of the Commiſſioners by the ſaid Commiſſion, or any renewed Commiſſion, authorized as aforeſaid, or the major Part of them, tender and give unto the ſaid Commiſſioners by the ſaid Commiſſion, or any renewed Commiſſion, authorized as aforeſaid, or the major Part of them, a juſt and true Account of all and every ſuch Sum and Sums of Money, or other Satisfaction which they the ſaid *B. C.* and

D. E.

D. E. their Heirs, Executors or Adminiſtrators reſpectively, ſhall and may have received, obtained, or raiſed, by virtue of theſe Preſents, or by Means of this preſent Deed of Bargain and Sale, out of the ſaid *J. R.*'s Eſtate hereby bargained and ſold, and all ſuch Monies, or other Satisfaction as ſhall appear on ſuch Account to be ſo by them reſpectively received, had, obtained, or raiſed by them as aforeſaid, they the ſaid *B. C.* and *D. E.* ſhall and will (after all juſt Allowances thereout deducted) upon the like reaſonable Requeſt, well and truly pay, ſatisfy and render, or cauſe to be paid, ſatisfied and rendered to them the ſaid Commiſſioners authorized, or the major Part of them, or as they or the major Part of them ſhall direct or appoint under their Hands, to the End the ſame Monies, or other Satisfaction may be by them the ſaid Commiſſioners, in and by the ſaid Commiſſion, or any renewed Commiſſion authorized, or the major Part of them, ordered, diſpoſed, diſtributed and divided unto and amongſt all and every the Creditors of the ſaid *J. R.* who have already come in and ſought Relief, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, according to the Limitations of the ſaid Statutes therein mentioned as aforeſaid, to the End the ſame Monies and other Satisfaction may be anſwered and paid to the Creditors ſeeking Relief as aforeſaid, proportionably according to their ſeveral Debts due and owing to them reſpectively from the ſaid *J. R.* according to the Deed or Order of

Receipt whereof is hereby acknowledged, and alſo in Conſideration of the Covenants and Agreements herein after contained, on the Part and Behalf of the ſaid *B. C.* and *D. E.* their Heirs, Executors, Adminiſtrators and Aſſigns, to be kept and performed, **Have** ordered, granted, bargained and ſold, **And** by theſe Preſents (as much as in them the ſaid Commiſſioners, Parties to theſe Preſents lieth, and they lawfully may) **Do**, order, grant, bargain and ſell, unto them the ſaid *B. C.* and *D. E.* their Heirs and Aſſigns, **All** the ſaid Bankrupt's Meſſuages, *&c.* and alſo all the Eſtate, Right, Title, Intereſt, Uſe, Truſt, Property, Poſſeſſion, Benefit, Equity of Redemption, Claim and Demand whatſoever, which he the ſaid *J. R.* at the Time of his becoming Bankrupt as aforeſaid, had of, in or to all and ſingular the ſaid Meſſuages, *&c.* and all and ſingular other the Premiſſes herein before mentioned, and hereby ordered, granted, bargained and ſold, or mentioned or intended ſo to be, with their and every of their Appurtenances, and alſo all other Meſſuages, Lands, Tenements and Hereditaments whatſoever and whereſoever, which he the ſaid *J. R.* hath purchaſed or obtained for Money, or other Recompence jointly with his Wife, Children or Child, to the only Uſe of him the ſaid *J. R.* and alſo all ſuch Uſe, Eſtate, Intereſt, Right and Title whatſoever, which he the ſaid *J. R.* had of, in, or to any Meſſuages, Lands, Tenements and Hereditaments whatſoever, at the Time he became Bankrupt as aforeſaid, which he could de-

part withal, and all and ſingular other the Premiſſes herein before bargained and ſold, or mentioned, or intended ſo to be; **To have** and **to hold** all and ſingular the ſaid Meſſuages, *&c.* with their and every of their Appurtenances, unto them the ſaid *B. C.* and *D. E.* their Heirs and Aſſigns, to and for the only proper Benefit and Advantage of them the ſaid *B. C.* and *D. E.* their Heirs and Aſſigns, for ever, or according to the ſaid *J. R.*'s Right and Intereſt therein, ſubject to ſuch Mortgage or Mortgages, or other Charges and Incumbrances (if any ſuch there be) as the ſame are legally charged with and liable to; in Truſt nevertheleſs, for the Benefit and Advantage of them the ſaid *B. C.* and *D. E.* and all and every other the Creditors of the ſaid *J. R.* who already have come in and ſought Relief, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, or any renewed Commiſſion againſt the ſaid *J. R.* and duly prove and aſcertain their ſeveral and reſpective Debts under the ſame, according to the Directions and Limitations of the ſaid Statutes; and as to the Overplus, if any ſhall be after Payment, and Satisfaction of all ſuch Debt or Debts as ſhall or may be proved under the ſaid Commiſſion, or any renewed Commiſſion, againſt the ſaid *J. R.* and the Charges of ſuing forth and proſecuting the ſame, in Truſt for the ſaid *J. R.* his Heirs or Aſſigns, according to the Statutes, and the true Intent and Meaning thereof. **And** the ſaid *B. C.* and *D. E.* each of them for himſelf ſeparate and a-part, and for his own

Heirs, Executors and Adminiſtrators, Acts and Deeds only, and not either of them for the other of them, his Heirs, Executors or Adminiſtrators, Acts or Deeds, do hereby ſeverally and reſpectively covenant, promiſe and agree, to and with their and every of their Heirs, Executors and Adminiſtrators, and with the ſaid Commiſſioners Parties hereto, by theſe Preſents in manner following, that is to ſay, That each of them, the ſaid *B. C.* and *D. E.* reſpectively, and their Heirs and Aſſigns, ſhall and will, with all convenient Speed, uſe their beſt Endeavours, by Suits at Law, or otherwiſe, to recover and get Poſſeſſion of the ſaid Meſſuages, *&c.* and ſhall and will, after Recovery and Poſſeſſion had of the ſame, or any Part thereof, make Sale and Diſpoſition thereof, with the like convenient Speed, to and for the moſt Money and beſt Price and Advantage he or they can or may, *bona fide*, obtain for the ſame. **And further**, That the ſaid *B. C.* and *D. E.* their Heirs, Executors and Adminiſtrators, ſhall and will, from Time to Time, and at all Times hereafter, upon reaſonable Requeſt or Notice to them given for that Purpoſe, under the Hands of the Commiſſioners by the ſaid Commiſſion, or any renewed Commiſſion, authorized as aforeſaid, or the major Part of them, tender and give unto the ſaid Commiſſioners by the ſaid Commiſſion, or any renewed Commiſſion, authorized as aforeſaid, or the major Part of them, a juſt and true Account of all and every ſuch Sum and Sums of Money, or other Satisfaction which they the ſaid *B. C.* and

D. E.

D. E. their Heirs, Executors or Adminiſtrators reſpectively, ſhall and may have received, obtained, or raiſed, by virtue of theſe Preſents, or by Means of this preſent Deed of Bargain and Sale, out of the ſaid *J. R.*'s Eſtate hereby bargained and ſold, and all ſuch Monies, or other Satisfaction as ſhall appear on ſuch Account to be ſo by them reſpectively received, had, obtained, or raiſed by them as aforeſaid, they the ſaid *B. C.* and *D. E.* ſhall and will (after all juſt Allowances thereout deducted) upon the like reaſonable Requeſt, well and truly pay, ſatisfy and render, or cauſe to be paid, ſatisfied and rendered to them the ſaid Commiſſioners authorized, or the major Part of them, or as they or the major Part of them ſhall direct or appoint under their Hands, to the End the ſame Monies, or other Satisfaction may be by them the ſaid Commiſſioners, in and by the ſaid Commiſſion, or any renewed Commiſſion authorized, or the major Part of them, ordered, diſpoſed, diſtributed and divided unto and amongſt all and every the Creditors of the ſaid *J. R.* who have already come in and ſought Relief, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, according to the Limitations of the ſaid Statutes therein mentioned as aforeſaid, to the End the ſame Monies and other Satisfaction may be anſwered and paid to the Creditors ſeeking Relief as aforeſaid, proportionably according to their ſeveral Debts due and owing to them reſpectively from the ſaid *J. R.* according to the Deed or Order of

Dividend and Diſtribution to be made by the ſaid Commiſſioners of the ſame; and they ſeverally and reſpectively, and for their ſeveral and reſpective Heirs, Executors and Adminiſtrators, do hereby further covenant, promiſe and agree to and with the ſaid Commiſſioners, Parties to theſe Preſents, their Heirs, Executors and Adminiſtrators, and to and with every of them by theſe Preſents, that they the ſaid *B. C.* and *D. E.* their ſeveral and reſpective Executors and Adminiſtrators, or ſome or one of them, ſhall and will from Time to Time, and at all Times hereafter, well and ſufficiently ſave, defend, keep harmleſs and indemnified the ſaid Commiſſioners Parties to theſe Preſents, their Heirs, Executors and Adminiſtrators, and every of them, their and every of their Bodies, Lands, Tenements, Goods and Chattels, and every Part thereof, and every of their Officers, Agents and Servants, who have been by them, or any of them, employed in and about the Execution of the ſaid Commiſſion, of and from all and all manner of Actions, Suits, Troubles, Coſts, Charges, Damages and Expences, which they, or any of them ſhall or may ſuffer, ſuſtain, or be put unto, for, or by Reaſon or Means of this preſent Deed of Bargain and Sale, or any other Act or Acts, Thing or Things whatſoever, lawfully done or executed by virtue of the ſaid Commiſſion, or their or any of their lawful Intermeddling in or with the Eſtate of the ſaid *J. R.* In Witneſs, *&c.*

As,

At, &c.

BE it remembred, That we the major Part of the Commiſſioners in the Commiſſion againſt *J. R.* named, whoſe Names are hereunto ſubſcribed, met at the Time and Place above-mentioned, and peruſed, examined and executed a Bargain and Sale of the ſaid Bankrupt's real Eſtate to *B C.* and *D E.* the Aſſignees choſen under the ſaid Commiſſion. Memorandum of executing Bargain and Sale.

R. S.
T. N.
R. D.

After this Deed of Bargain and Sale is executed by the Commiſſioners, it muſt be acknowledged by one of them before a Judge, or a Maſter in Chancery, *&c.* and by the Statute of 27 *Hen.* 8. *c.* 16. *ſect.* 1. within ſix Months after the Date of the Deed. If in the *King's Bench*, or *Common Pleas*, before one of the Judges of thoſe Courts; if in *Chancery*, before one of the Maſters.

As yet of Term, Witneſs William Lord Mansfield.

BE it remembred, That on in this ſame Term, came before our Lord the King at *Weſtminſter R. S.* Eſq; in his own proper Perſon, and brought into the Court of our Lord the King before the King himſelf then and there, a certain Indenture, which he acknowledged to be his Deed, and prayed that the ſaid Indenture might be inrolled of Record, as his Deed before

N. B. Aſſignees can maintain no Action relative to the Bankrupt's real Eſtate, till the Bargain and Sale is inrolled. Before 165, 166.

before our ſaid Lord the King; and it is inrolled in theſe Words and Figures following, that is to ſay, **This Indenture**, *&c.* ſealed and delivered in the Preſence of

R. S. **Eſq; and others to** B. C. **and** D. E.

Inrolled in the Court of *King's Bench*, before the King himſelf at *Weſtminſter*, on in Term in the firſt Year of the Reign of our Sovereign Lord *George* the Third, now King of *Great Britain*, *&c.*

Roll -

Term in the firſt Year of the Reign of King George the Third.

Entries of *R. R.* one of the Attornies, *&c.*

AN Indenture dated between *R. S.* Eſq; and *M. W.* and *R. W.* Gent. of the one Part, and *B. C.* of, *&c.* and *D. E.* of, *&c.* of the other Part.

Roll

Third

Third and laſt Sitting at Guildhall.

At, &c.

MEmorandum, This being the Day appointed in the *London Gazette* for *J. R.* the Perſon againſt whom the Commiſſion of Bankrupt is awarded, to ſurrender himſelf to the Commiſſioners in the ſaid Commiſſion named and authorized, and to make a full Diſcloſure and Diſcovery of all his Eſtate and Effects, the ſaid *J. R.* did not attend, although we ſtaid till paſt Twelve o'Clock.

Memorandum of Commiſſioners laſt Sitting, when Bankrupt does not appear.

R. S.
T. N.
R. D.

If the Bankrupt does not ſurrender at the third Sitting, (which is always 42 Days after Notice in the *London Gazette*) he is guilty of Felony without Benefit of Clergy; but the Lord Keeper may enlarge the Time to 49 Days, if the Bankrupt applies for that Purpoſe, which is uſually done upon the following Petition:

To the Right Honourable Robert *Lord* Henley, *&c.*

The humble Petition of *J. R.* againſt whom a Commiſſion of Bankrupt hath lately iſſued,

Sheweth,

THAT on or about the Day of laſt, a Commiſſion of Bankrupt

Petition for Time to ſurrender.

rupt iſſued againſt your Petitioner, directed to *R. S. T. N. R. D. M. W.* and *R. W.* and your Petitioner was thereon declared a Bankrupt.

That by an Advertiſement in the *London Gazette*, your Petitioner is required to ſurrender himſelf to the ſaid Commiſſioners on the Day of Day of Day of on the laſt of which ſaid Days your Petitioner is required to ſurrender, and finiſh his Examination.

That your Petitioner hath ſurrendered himſelf twice to the ſaid Commiſſioners, and ſubmitted himſelf to be examined from Time to Time touching his Eſtate and Effects, and to conform himſelf to the ſeveral Statutes now in Force concerning Bankrupts; but his Affairs are ſo very intricate and perplexed, that he cannot poſſibly be able to finiſh his ſaid Examination on the ſaid Day of

Your Petitioner therefore moſt humbly prays your Lordſhip, that the Time for your Petitioner's ſurrendering himſelf to the ſaid Commiſſioners, and diſcloſing and diſcovering his Eſtate and Effects, may be enlarged for the Time or Space of 50 Days, to be computed from the ſaid Day of this Inſtant.

Day 1760.

Be it as prayed, hereof give Notice to the Commiſſioners forthwith.

Henley, C. S.

And your Petitioner, *&c.*

In

In Matter of *J. R.* a Bankrupt.

To the Right Hon. Sir John Willes, *Knt. Sir* John Eardley Wilmot, *Knt. and Sir* Sidney Stafford Smyth, *Knt. Lords Commiſſioners for the Cuſtody of the Great Seal of* Great Britain.

The humble Petition of *B. C.* and *D. E.*

Sheweth,

THAT on the Day of laſt a Commiſſion of Bankrupt under the Great Seal of *Great Britain* was awarded and iſſued againſt *J. R.* by the Name and Deſcription of *J. R.* of, *&c.* and was directed to *R. S. T. N.* and *R. D.* Eſqrs. and *M. S.* and *R. W.* Gentlemen, as Commiſſioners to execute the ſame.

Petition to Lords Commiſſioners by Aſſignees, on Behalf of a Bankrupt, for further Time to ſurrender.

That the ſaid *J. R.* hath been declared a Bankrupt, and by Summons under the Hands of the major Part of the ſaid Commiſſioners, and alſo by Notice in the *London Gazette*, was required to ſurrender himſelf to the ſaid Commiſſioners, to be examined by them at the ſeveral Days and Times therein particularly mentioned touching the Diſcloſure and Diſcovery of his Eſtate and Effects, and on the Day of the ſaid *J. R.* was by ſuch Summons and Notice required to finiſh his Examination under the ſaid Commiſſion.

That the ſaid Bankrupt, being then in an ill State of Health, and a Priſoner in the *Fleet*,

Fleet, and not being then prepared to finiſh his Examination, your Petitioners, who have been duly choſen Aſſignees of the ſaid Bankrupt's Eſtate and Effects, on the Day of preferred their Petition to your Lordſhips, and obtained an Order thereon for forty Days further Time, to be computed from the ſaid Day of for the ſaid Bankrupt to ſurrender himſelf and finiſh his Examination.

That your Petitioners find, that the ſaid Bankrupt, by Reaſon of his ill State of Health as aforeſaid, hath not been able to prepare and compleat his Examination, and inaſmuch as the Time granted by your Lordſhips for the ſaid Bankrupt to finiſh his Examination, will expire on the Day of

Day of

Let the Time for the ſaid *J. R.* the Bankrupt's ſurrendering himſelf to the Commiſſioners in the ſaid Commiſſion named, or the major Part of them, and diſcloſing and diſcovering his Eſtate and Effects and finiſhing his Examination before them, be further enlarged for the Space of ten Days, to be computed from the Day of Hereof give Notice to the Commiſſioners forthwith.

J. Willes, C. S.

Your Petitioners therefore humbly pray your Lordſhips, That the Time for the ſaid Bankrupt's ſurrendering himſelf, and diſcloſing and diſcovering his Eſtate and Effects to the acting Commiſſioners named, and finiſhing his Examination before them, may be further enlarged for the Space of ten Days, to be computed from the ſaid Day of

And your Petitioners ſhall ever pray, *&c.*

In

In the Matter of J. R. *againſt whom a Commiſſion of Bankrupt hath iſſued.*

Affidavit of the due Service of the ſaid Petition.

R. R. of, &c. maketh Oath, That he this Deponent did, on the Day of ſerve Mr. and Mr. and on the Day of Mr. and on the Day of the ſame Month and on the Day of this Inſtant Mr. with a Petition preferred by *B. C.* and *D. E.* Aſſignees of the Eſtate and Effects of the ſaid *J. R.* the Bankrupt, in this Matter, to the Right Hon. the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, with their Lordſhips Order thereon, bearing Date the Day of the ſaid Month of whereby it was ordered, that the Time for the ſaid *J. R.* the Bankrupt's ſurrendering himſelf to the Commiſſioners in the ſaid Commiſſion named, or the major Part of them, and diſcloſing and diſcovering his Eſtate and Effects, and finiſhing his laſt Examination before them, be further enlarged for the Space of ten Days, to be computed from the Day of next, whereof Notice was forthwith to be given; in Manner following, that is to ſay, by perſonally delivering to the ſaid reſpectively, a true Copy of the ſaid Petition and Order thereon, and at the ſame Time ſhewing them reſpectively the ſaid original Petition and Order thereon, at the Houſe of the ſaid Mr. in

in with his Agent or Partner there, and at the ſame Time ſhewing him the ſaid original Petition and Order thereon, and by leaving another true Copy of the ſaid Petition and Order thereon, at the Houſe of the ſaid in with his Servant there, and at the ſame Time ſhewing him the ſaid original Petition and Order thereon. And this Deponent further ſaith, that the ſaid Mr. acts as Clerk or Secretary to the ſaid Commiſſion; and that the ſaid are the acting Commiſſioners, and that the ſaid and are the Aſſignees under the ſaid Commiſſion, as this Deponent hath been informed and believes.

R. R. Sworn at the publick Office in *Symond's Inn*, this Day of before me

If the Bankrupt obtains Time to ſurrender, then prepare this Memorandum.

At, &c.

A Memorandum of the Time being enlarged for a Bankrupt to ſurrender.

BE it remembred, That at the Day and Place above-mentioned, we whoſe Names are hereunto ſubſcribed, being the major Part of the Commiſſioners named in and by a Commiſſion of Bankruptcy awarded againſt *J. R.* having met purſuant to the Advertiſement in the *London Gazette* for the Creditors to come in and prove their ſaid Debts, and for the Bankrupt to finiſh his laſt Examination, we were ſerved with an Order ſigned by

by the Right Honourable the Lord Keeper, bearing Date the Day of this Inſtant for the ſaid Bankrupt's Time being enlarged for forty-nine Days, to be computed from the ſaid Day of this Inſtant, wherefore we do adjourn accordingly.

R. S.

T. N.

R. D.

If the Bankrupt ſurrenders, but is a Priſoner in Execution, and therefore cannot attend the Commiſſioners at *Guildhall*, prepare this Memorandum.

Adjournment to Priſon where Bankrupt is in Execution, &c.

Memorandum, That the major Part of the Commiſſioners named and authorized in and by a Commiſſion of Bankrupt awarded and iſſued againſt *J. R.* of, *&c.* met here this Day purſuant to Notice in the *London Gazette*, in order to finiſh the Bankrupt's laſt Examination; but the ſaid Bankrupt being a Priſoner in the *King's Bench* Priſon in Execution, (or in a very ill State of Health) and not able to attend here to be examined: **We do therefore** adjourn to the ſaid Priſon of the *King's Bench*, to take the ſaid Bankrupt's Examination.

R. S.

T. N.

R. D.

At the King's Bench *Priſon by Adjournment from* Guildhall, London, *Day of* 1760.

Bankrupt's laſt Examination.

R. S.

J. R. late of, *&c.* the Perſon againſt whom the Commiſſion is awarded, ſurrendered himſelf purſuant to Notice in the *London Gazette* to the major Part of the Commiſſioners in and by the ſaid Commiſſion named and authorized, in order to make a full Diſcloſure and Diſcovery of his Eſtate and Effects, and in all Things to conform himſelf to the ſeveral Statutes heretofore made and now in Force concerning Bankrupts, and particularly to an Act of Parliament made in the fifth Year of his late Majeſty's Reign, intituled, "An Act to prevent the

T. N.

"committing of Frauds by Bankrupts." And the ſaid *J. R.* being now again ſworn and examined upon his Oath, ſaith, That the ſeveral Paper Writings, marked with the Letters A, B, both ſubſcribed by this Examinant, and exhibited before the ſaid Commiſſioners, and the ſeveral Books of Accounts belonging to this Deponent, numbered 1. 2. 3. now in the Poſſeſſion or Cuſtody of the Aſſignees choſen under the ſaid Commiſſion awarded againſt this Examinant, together with what this Examinant hath already, at a former Examination, given an Account of, do contain a full and true Ac-

R. D.

count, Diſcloſure and Diſcovery of all this Examinant's Eſtate and Effects, both Real and Perſonal, and how and in what manner,

to

to whom, and upon what Conſideration, and at what Time or Times he has diſpoſed of, aſſigned or transferred all or any of his Goods, Wares, Merchandizes, or other his Eſtate and Effects, and all Books, Papers and Writings relating thereto, of which he was poſſeſſed, or in or to which he was any ways intereſted or intitled, or which any Perſon or Perſons had, or hath, or have in Truſt for him this Examinant, or for his Uſe, at any Time before or after the iſſuing of the ſaid Commiſſion, or whereby he this Examinant, or his Family, hath, or have, or may have or expect any Profit, Poſſibility of Profit, Benefit or Advantage whatſoever, except only ſuch Part of this Examinant's Eſtate and Effects, as have been really and *bona fide* before ſold or diſpoſed of in the way of his Trade and Dealings, and except ſuch Sums of Money as have been laid out for this Examinant's own Expences, and in the ordinary Expences of his Family, and except what he hath ſpent in his neceſſary Subſiſtence ſince the iſſuing of the ſaid Commiſſion, and except the Sum of 3*l.* 6*s.* 3*d.* ½, now delivered up unto the ſaid Aſſignees; and this Examinant hath alſo delivered up unto the ſaid Commiſſioners by the ſaid Commiſſion authorized, or the major Part of them, or to the Aſſignees choſen under the ſame, all ſuch Part of his Goods, Wares, Merchandizes, Monies, Eſtate and Effects, and all Books, Papers and Writings relating thereunto, as at the Time of this his Examination, is or are, or at the Time of his former Examination, was or were

R. S.

T. N.

R. D.

R. S. were in his Poſſeſſion, Cuſtody or Power, his neceſſary Wearing Apparel only excepted. And this Examinant further ſaith, That he hath not at any Time before the iſſuing of the ſaid Commiſſion, or at any Time ſince, made any Aſſignment, Transfer, or other Diſpoſal of his Goods, Eſtate and Effects, or any
T. N. Part thereof, to any Perſon or Perſons whatſoever, in Truſt for him this Examinant, or whereby this Examinant expects to have or receive any Benefit whatſoever; nor hath this Examinant removed, concealed, or embezzled, any Part of his Eſtate, Real and Perſonal, or any Books of Account, Papers or Writings relating thereto, with Intent to
R. D. defraud his Creditors.

J. R.

Meeting

Meeting to execute Bankrupt's Certificate.

To the Right Honourable Robert *Lord* Henley, *Baron of* Grainge *in the County of* Southampton, *Lord Keeper of the Great Seal of* Great Britain.

Certificate to the Lord Keeper of a Man's being found Bankrupt upon Examination; and of his conforming to the ſeveral Statutes relating to Bankrupts.

WE *R. S. T. N.* and *R. D.* Eſquires, *M. W.* and *R. W.* Gentlemen, or the major Part of us whoſe Names are hereunto ſubſcribed, and Seals ſet, the Commiſſioners named and authorized in and by a Commiſſion of Bankrupt awarded againſt *J. R.* of, *&c.* bearing Date at *Weſtminſter* the Day of in the Year of the Reign of our Sovereign Lord *George* III. having begun to put the ſaid Commiſſion in Execution, and found that the ſaid *J. R.* did before the Date and ſuing forth of the ſaid Commiſſion, and ſince the Day of 17 , become a Bankrupt within the true Intent and Meaning of ſome or one of the Statutes made and now in Force concerning Bankrupts, do humbly certify to your Lordſhip, that the ſaid *J. R.* did on the Day of laſt paſt, ſurrender himſelf to us or the major Part of us, purſuant to notice in the *London Gazette* for that Purpoſe given, and did ſign or ſubſcribe ſuch ſurrender, and did ſubmit himſelf to be examined from Time to Time upon Oath, by and before us or the major Part of us,

and in all Things did conform himſelf to the ſeveral Statutes made and now in Force concerning Bankrupts, and particularly to the Act made in the fifth Year of his late Majeſty's Reign, intituled, *An Act to prevent the committing of Frauds by Bankrupts*; whereupon and for the better Diſcovery of the Eſtate and Effects of the ſaid *J. R.* and putting the ſaid Acts, and the ſaid Commiſſion in Execution, we, or the major Part of us, have had three or more ſeveral Meetings upon the ſaid Commiſſion, for the Examination of the ſaid *J. R.* and cauſed due Notice to be publiſhed in the *London Gazette*, of the Time and Place when and where we intended to meet for the taking ſuch Examination and ſurrender, and for the ſaid Bankrupt's delivering up his Eſtate and Effects, and all Books, Papers and Writings relating thereto, and for the Creditors of the ſaid *J. R.* to prove their Debts before us at ſuch Meetings; at which Meetings the ſaid *J. R.* hath been examined from Time to Time upon Oath by and before us, or the major Part of us, according to the Direction of the ſaid laſt mentioned Act; and we likewiſe gave notice in the *London Gazette* of the Time and Place when and where we intended to meet, for the ſaid *J. R.* to finiſh his Examination before us, and that ſuch of his Creditors as had not proved their Debts before us, might at ſuch Meeting prove the ſame, and be preſent at his finiſhing his ſaid Examination, and ſhew cauſe why we ſhould not make this Certificate in order for the ſaid *J. R.* being diſcharged from all his Debts, according

to

to the ſaid laſt mentioned Act, and we further humbly certify unto your Lordſhip, that the ſaid *J. R.* did at the Time and Place appointed for his laſt Examination, attend us, or the major Part of us, and finiſh his Examination before us, according to the Direction of the ſaid laſt mentioned Act, and that none of the Creditors of the ſaid *J. R.* who have proved their Debts before us or the major Part of us, have ſhewn any Cauſe againſt our making this Certificate; and we do further humbly certify unto your Lordſhip, that the ſaid *J. R.* hath upon ſuch his Examination, made a full Diſcovery of his Eſtate and Effects to us, or the major Part of us, and in all Things conformed himſelf to the ſeveral Statutes made and now in Force concerning Bankrupts, and particularly according to the Direction of the ſaid laſt mentioned Act, and that there doth not appear to us any Reaſon to doubt of the Truth of ſuch Diſcovery, or that the ſame is not a full Diſcovery of all the Eſtate and Effects of the ſaid *J. R.* and we further humbly certify that the Creditors whoſe Names or Marks are hereunto ſubſcribed or ſet, are full four Parts in five in Number and Value of the Creditors of the above named *J. R.* and that they are Creditors for not leſs than twenty Pounds reſpectively, and have duly proved their Debts under the ſaid Commiſſion. And Laſtly, we humbly certify, that it doth appear to us, upon due Proof, that all the ſaid Creditors have already ſigned or ſet their Marks to this Certificate, teſtifying their Conſent to ſuch Allowance as by the ſaid laſt

mentioned Act is made to Bankrupts, and to this Certificate, and to the ſaid Bankrupt's Diſcharge from his ſaid Debts, in purſuance of the ſame Act. In Witneſs whereof, we, or the major Part of us, have hereunto ſet our Hands and Seals, this Day of 1760.

We the Creditors of the above named *J. R.* whoſe Names or Marks are hereunto ſubſcribed or ſet, do teſtify and declare our Conſent to the Commiſſioners ſigning the ſaid Certificate, and that the ſaid *J. R.* may have ſuch Allowance and Benefit as are given to Bankrupts by the Act of Parliament laſt above mentioned, and that he be diſcharged from his Debts in purſuance of the ſame Act.

R. S. (L. S.)

T. N. (L. S.)

R. D. (L. S.)

N. B. Such Creditors only as have proved a Debt under the Commiſſion to the Amount of twenty Pounds or upwards, need ſubſcribe the above Conſent.

J. R.

J. R. late of, &c. againſt whom a Commiſſion of Bankruptcy hath iſſued, maketh Oath, That the Certificate bearing Date the Day of and made by the major Part of the Commiſſioners in the ſaid Commiſſion named, and directed to the Right Honourable *Robert* Lord *Henley*, Baron of *Grainge*, in the County of *Southampton*, Lord Keeper of the Great Seal of *Great Britain*, and the Conſent of all this Deponent's Creditors, who ſigned the ſaid Certificate, and thereby declared their Conſent to the Commiſſioners ſigning the ſame, and that this Deponent may have the Allowance and Benefit given to Bankrupts by the Act paſſed in the fifth Year of his late Majeſty's Reign, intituled, *An Act to prevent the committing of Frauds by Bankrupts*, and be diſcharged from his Debts according to the ſame Act, was obtained fairly, and without Fraud,

A Bankrupt's Affidavit that his Certificate was fairly obtained.

J. R. Sworn the Day of 1760, at the publick Office in *Symond*'s Inn, before me

(a Maſter in Chancery.)

BE it Remembred, That on the Day and Year aboveſaid, we the major Part of the Commiſſioners named in the Commiſſion of Bankrupt awarded againſt *J. R.* met at the Place aboveſaid, and there peruſed the Proceedings of Proofs of Debts under the ſaid Commiſſion, and thereby finding that a ſuf-

Memorandum of ſigning the Certificate.

R. S.

T. N.

a ſufficient Number of the Creditors who had proved their Debts of twenty Pounds and upwards each, being upwards of four Fifths in Number and Value, had ſigned a Certificate for the Diſcharge of the ſaid *J. R.* we the ſaid Commiſſioners did therefore ſign and ſeal the ſaid Certificate according to the Requeſt of the ſaid Creditors.

R. D.

Affidavit of ſeeing the Creditors of a Bankrupt ſign his Certificate.

P. Q. of, *&c.* maketh Oath, That he this Deponent did ſee (the Creditors Names, Places of Abode, and Additions) ſeverally ſubſcribe their reſpective Names to a Conſent at the Foot of a certain Inſtrument in Writing, intended to be a Certificate under the Hands and Seals of the major Part of the Commiſſioners named and authorized in and by a Commiſſion of Bankrupt awarded and iſſued out againſt *J. R.* of, *&c.* that he the ſaid *J. R.* hath in all Things conformed himſelf to the ſeveral Statutes made and now in Force concerning Bankrupts, whereby they do ſeverally teſtify and declare their Conſent to the ſaid Commiſſioners ſigning and ſealing the ſaid Certificate, and that the ſaid *J. R.* may have ſuch Allowance and Benefit as are given to Bankrupts by an Act of Parliament made in the fifth Year of the Reign of his late Majeſty King *George* II. intituled, *An Act to prevent the committing of Frauds by Bankrupts*; and be diſcharged from his Debts in purſuance of the ſaid Act.

P. Q. Sworn at the publick Office, *&c.*

T. A.

T. A. of, and *O. N.* of ſeverally make Oath as follows; And firſt this Deponent *T. A.* for himſelf ſaith, That he this Deponent did ſee (the Names, Places of Abode, and Additions of ſuch Creditors as ſigned) ſeverally ſubſcribe their reſpective Names, *&c.* (as in the above Affidavit) and this Deponent *O. N.* for himſelf ſaith, That he did ſee ſubſcribe his Name to the ſaid Conſent.

The like where two Perſons ſaw the Creditors ſign.

T. A.
O. N. Sworn, *&c.*

The above Certificate, together with the Affidavit of ſeeing the Creditors ſign their Conſent at the Foot thereof, muſt be left with the Secretary of Bankrupt's, at his Office, who will thereupon give the Meſſenger to the Commiſſion a Certificate for the Printer of the *Gazette* to inſert the following Advertiſement, *viz.*

WHEREAS the acting Commiſſioners in the Commiſſion of Bankrupt awarded againſt *J. R.* of, *&c.* have certified to the Right Honourable *Robert* Lord *Henley*, Baron of *Grainge* in the County of *Southampton*, Lord Keeper of the Great Seal of *Great Britain*, That the ſaid *J. R.* hath in all Things conformed himſelf according to the Directions of the ſeveral Acts of Parliament made concerning Bankrupts; this is to give notice, that by virtue of an Act paſſed in the fifth Year of his late Majeſty's

Reign, his Certificate will be allowed and confirmed as the ſaid Act directs, unleſs Cauſe be ſhewn to the contrary on or before the * Day of next.

* 21 Days.

Within the twenty-one Days you muſt alſo leave with the Secretary, the Affidavit of the Bankrupt's having obtained his Certificate fairly; and if no Cauſe is ſhewn within the Time, my Lord Keeper will allow and confirm the Certificate.

Allowance

Allowance of Certificate.

Day of 1760.

WHEREAS the uſual Notice hath been given in the *London Gazette* of the Day of laſt, and none of the Creditors of the above named *J. R.* have ſhewn any Cauſe to the Contrary; I do allow and confirm this Certificate.

Henley, C. S.

In caſe the Aſſignees neglect to make a Dividend within twelve Months after iſſuing of the Commiſſion (the Time limited by Act of Parliament) they may be ſummoned by the Commiſſioners; which Summons uſually runs thus, *viz.*

Notice from Commiſſioners to Aſſignees to make a Dividend.

You are hereby required to attend us, the major Part of the Commiſſioners in a Commiſſion of Bankruptcy againſt *J. R.* on the Day of at the *Guildhall* of the City of *London*, to ſhew Cauſe why Notice has not been given by you for making a Dividend of the Eſtate and Effects of the ſaid Bankrupt, according to the Act of Parliament in that Caſe made and provided, which if you fail of doing, a Meeting will be forthwith appointed by us, for you to produce your Receipts and Payments touching the ſame, and to make a Dividend and Diſtribution of ſuch Part as ſhall appear to be remaining in your Hands.

To *B. C.* and *D. E.* Aſſignees of the Eſtate and Effects of *J. R.* a Bankrupt.

Meeting for making a Dividend and Diſtribution of Bankrupt's Eſtate and Effects.

At, &c.

Order of Dividend.

Memorandum, This being the Day appointed in the *London Gazette* for making a Dividend of the Eſtate and Effects of *J. R.* the Perſon againſt whom a Commiſſion of Bankrupt hath iſſued, it appearing to us the major Part of the Commiſſioners named and authorized in and by the ſaid Commiſſion, that the Debts proved under the ſaid Commiſſion do amount in the Whole to the Sum of and it appearing to us by the Account of *B. C.* and *D. E.* the Aſſignees under the ſaid Commiſſion, this Day exhibited to us upon Oath, that the Sum Total

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N. B. It is uſual to give the Creditors Notice of a Dividend being made by a public Advertiſement, mentioning where they are to apply to receive it; which is commonly at the Clerk of the Commiſſions Houſe, who has a Book of proper Receipts for the Creditors to ſign on receiving their Dividend, which Receipt may be in the following Form, *viz.*

Received this Day of of Mr. B. C. *and* D. E. *Aſſignees of the Eſtate and Effects of* J. R *a Bankrupt, the Sum of being a Dividend of in the Pound on my Debt of proved under the ſaid Commiſſion.*

of

of the ſaid Bankrupt's Eſtate now remaining in their Hands to be divided, doth amount to the Sum of now we do order and direct, upon the Admiſſion of the ſaid Aſſignees, that out of the Monies ſo remaining in the Hands of the Aſſignees as aforeſaid, a Dividend of in the Pound be paid to ſuch of the Bankrupt's Creditors as have already proved their Debts and ſought Relief under the ſaid Commiſſion, in Proportion to their ſeveral Debts, which ſaid Dividend of in the Pound, amounts to as we compute the ſame, and after Payment thereof, there will remain in the Hands of the ſaid Aſſignees the Sum of which they are to retain towards anſwering future Charges and making a further Dividend.

At, &c.

Order for a final Dividend.

MEmorandum, This being the Day appointed in the *London Gazette* for making a further Dividend of the Eſtate and Effects of *J. R.* the Perſon againſt whom a Commiſſion of Bankrupt hath been awarded, it appeared to us, the major Part of the Commiſſioners named and authorized in and by the ſaid Commiſſion, that by an Order of Diſtribution made the Day of laſt, the Debts then proved under the ſaid Commiſſion, amounted in the Whole to the Sum of and that the Sum Total of the ſaid Bankrupt's Eſtate, then remaining in the Hands of *B. C.* and *D. E.* the Aſſignees under the ſaid Commiſſion, did amount to it was thereby ordered and directed, that

a Dividend of in the Pound ſhould be paid to ſuch of the Bankrupt's Creditors as had proved their Debts, and ſought Relief under the ſaid Commiſſion, in Proportion to their ſeveral Debts, which ſaid Dividend of in the Pound, did amount to the Sum of as the ſaid Commiſſioners did compute the ſame, and after Payment thereof, there would remain in the Hands of the ſaid Aſſignees the Sum of which they were to retain towards anſwering future Charges, and making a further Dividend. And it appearing to us by the Account of the ſaid Aſſignees, this Day exhibited to us upon Oath, that the Sum Total of the ſaid Bankrupt's Eſtate, ſince got in and received by them, doth amount to the Sum of which being added to the ſaid Sum of make together the Sum of and it alſo appeareth to us by the Account of the ſaid Aſſignees, and alſo by a Certificate of one of the Maſters of the Court of *Chancery*, bearing Date the Day of of his having ſettled and taxed a Bill of Fees and Diſburſements of Mr. *R. R.* Clerk to the ſaid Commiſſion, at the Sum of and by another Certificate of another of the Maſters of the ſaid Court of *Chancery*, bearing Date the Day of of his having ſettled and taxed another Bill of Fees and Diſburſements of the ſaid Mr. *R. R.* under the ſaid Commiſſion, including the Coſts of ſeveral Actions at Law, at the Sum of that they the ſaid Aſſignees have paid, laid out, and expended, the Sum of which being deducted from the ſaid Sum of reduces the

the ſame to the Sum of which ſaid Sum now remains in the Hands of the ſaid Aſſignees to be divided. And it appearing to us that the Debts proved under the ſaid Commiſſion, including the Debts that have been this Day proved, to the Amount of do make together the Sum of : Now we do order and direct, upon the Admiſſion of the ſaid Aſſignees, that a Dividend of in the Pound ſhall be paid to ſuch of the ſaid Creditors who have this Day proved their Debts, which will amount to and after the Payment thereof, there will remain in the Hands of the ſaid Aſſignees the Sum of and we do order and direct, that out of the Monies ſo remaining in the Hands of the ſaid Aſſignees as aforeſaid, a Dividend of in the Pound be paid to all the Bankrupt's Creditors who have already proved their Debts and ſought Relief under the ſaid Commiſſion, in Proportion to their ſeveral Debts, which ſaid Dividend of in the Pound amounts to the Sum of as we compute the ſame, and after Payment thereof there will remain in the Hands of the ſaid Aſſignees the Sum of and no more.

N. B. But if any Thing conſiderable is left in Hand, or Debts remain to be got in, ſo that this is intended only as another further Dividend, then conclude it as the former Order of Diſtribution, *viz.* which they are to retain towards anſwering future Charges, and making a further Dividend.

As the following Aſſignment is a very ſpecial one, and not often made, it is therefore inſerted by itſelf.

Aſſignment from the Commiſſioners of Bankrupt to new Aſſignees being removed (at their own Deſire) by Order, and after a Temporary Aſſignment had originally been made.

THIS Indenture Tripartite, made the Day of in the firſt Year of the Reign of our Sovereign Lord *George* III. by the Grace of God of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, and ſo forth, and in the Year of our Lord 1760, **Between** *B. C.* of, *&c.* and *D. E.* of, *&c.* of the firſt Part, *R. S. T. N.* and *R. D.* Eſquires, being the major Part of the Commiſſioners named and authorized in and by a Commiſſion of Bankrupt, awarded and iſſued againſt *J. R.* of, *&c.* of the ſecond Part, and *A. F.* of, *&c.* of the third Part. **Whereas** a Commiſſion of Bankrupt under the Great Seal of *Great Britain*, bearing Date at *Weſtminſter* the Day of grounded upon the ſeveral Statutes made and now in Force concerning Bankrupts, or ſome or one of them, hath been awarded and iſſued forth againſt the ſaid *J. R.* directed to the ſaid *R. S. T. N.* and *R. D.* together with *M. W.* and *R. W.* Gentlemen, thereby giving full Power and Authority to the ſaid Commiſſioners, four or three of them, to execute the ſame, as in and by the ſaid Commiſſion, Relation being thereunto had, doth more fully and at large appear: **And whereas** the ſaid *R. S. T. N.* and *R. D.* being the major Part of the ſaid Commiſſioners in the ſaid Commiſſion named and authorized, having begun to put the ſaid Commiſſion into Execution, upon due Examination of Witneſſes, and other good Proofs

Poooſs upon Oath before them had and taken, found, or it otherwiſe appeared to them, that the ſaid *J. R.* for ſeveral Years before the Date and ſuing forth of the ſaid Commiſſion, exerciſed and followed the Trade or Buſineſs of a Printſeller, and ſought and endeavoured to get his Living thereby, as others of the ſame Trade or Buſineſs uſually do; and that he the ſaid *J. R.* before the Date and ſuing forth of the ſaid Commiſſion, became indebted to *D. R.* of, *&c.* and *R. J.* of, *&c.* in the Sum of 150*l.* and upwards, and being ſo indebted, he the ſaid *J. R.* did, in the Judgment of the major Part of the Commiſſioners in the ſaid Commiſſion named, become Bankrupt to all Intents and Purpoſes, within the true Intent and Meaning of the ſeveral Statutes in the ſaid Commiſſion named, ſome or one of them, and they declared him a Bankrupt accordingly: **And whereas** the ſaid Commiſſioners, Parties to theſe Preſents, in further Execution of the ſaid Commiſſion, and of the Statutes therein mentioned, and by virtue of the ſame, by Indenture bearing Date the Day of made between the ſaid *R. S. T. N.* and *R. D.* of the one Part, and *W. C.* of, *&c.* of the other Part, for the Conſideration therein mentioned, did as much as in them lay, and they lawfully might, order, bargain, ſell, diſpoſe, aſſign and ſet over, unto the ſaid *W. C.* his Executors, Adminiſtrators and Aſſigns, all and ſingular the Goods, Wares and Chattels, Debts, Sum and Sums of Money, and all the perſonal Eſtate whatſoever of the ſaid

J. R. of which he was poſſeſſed or intitled unto, or of which any other Perſon or Perſons was or were poſſeſſed, **In Truſt** for him at the Time he became a Bankrupt, or at any Time ſince; **To hold**, aſk, demand, ſue for, recover, levy, and receive all and ſingular the Premiſſes thereby aſſigned, or mentioned, or intended ſo to be, unto the ſaid *W. C.* his Executors, Adminiſtrators and Aſſigns, **In Truſt** for the immediate Preſervation thereof, and to and for the Uſe, Benefit and Advantage of all the Creditors of the ſaid *J. R.* who had then ſought, or ſhould then after in due Time come in and ſeek Relief, under the ſaid Commiſſion, according to the ſeveral Statutes therein mentioned, or ſome or one of them, and to and for no other Uſe, Truſt, Intent or Purpoſe whatſoever, as in and by the ſaid recited Indenture, Relation being thereunto had, will and may more fully and at large appear: **And whereas** the ſaid *W. C.* did, in and by the ſaid recited Indenture of Aſſignment, covenant and agree, to and with the ſaid Commiſſioners, Parties thereto, their Executors, and Adminiſtrators, and to and with every of them, that he the ſaid *W. C.* his Executors, or Adminiſtrators, or ſome or one of them, ſhould and would, as ſoon as an Aſſignee or Aſſignees of the Bankrupt's Eſtate and Effects ſhould be duly choſen and appointed, join with the major Part of the Commiſſioners named in the ſaid Commiſſion, in aſſigning all and ſingular the ſaid Goods, Chattels, Debts, Sum and Sums of Money, Wares and Merchandizes, and all other the Premiſſes

miſſes in the ſaid recited Indenture aſſigned to him, unto ſuch Perſon or Perſons, who ſhould be duly choſen and appointed to be the Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate and Effects, and that he the ſaid *W. C.* would deliver up all the Eſtate and Effects of the ſaid Bankrupt, as ſhould or might have come to his Hands or Poſſeſſion, or to the Hands or Poſſeſſion of any other Perſon or Perſons, as ſhould be duly choſen Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate or Effects, or otherwiſe, as the ſaid Commiſſioners ſhould direct or appoint, as in and by the ſaid recited Indenture may more at large appear: **And whereas** at a Meeting of the major Part of the Commiſſioners, in and by the ſaid Commiſſion named and authorized, at the *Guildhall* of the City of *London*, the Day of purſuant to Notice in the *London Gazette* for that Purpoſe given, the major Part in Value of the Creditors of the ſaid *J. R.* then preſent, and who had proved their Debts under the ſaid Commiſſion, and whoſe Debts reſpectively amounted to ten Pounds or upwards, did nominate, elect and chooſe, the ſaid *B. C.* and *D. E.* to be Aſſignees of the Eſtate and Effects of the ſaid *J. R.* and deſired an Aſſignment thereof to be made to them accordingly by the ſaid *W. C.* and the ſaid Commiſſioners; **And whereas** by Indenture Tripartite bearing Date the Day of made between the ſaid *W. C.* of the firſt Part, the ſaid Commiſſioners, Parties hereto, of the ſecond Part, the ſaid *B. C.* and *D E.* of the third Part, the ſaid *W. C.* for the Conſideration

ſideration therein mentioned, by the Conſent and Direction of the ſaid Commiſſioners, Parties hereto, teſtified by their being made Parties to and Sealing and Delivering thereof, **Did** order, bargain, ſell, diſpoſe, aſſign and ſet over, unto the ſaid *B. C.* and *D. E.* their Executors, and Adminiſtrators, all and ſingular the Goods, Wares and Chattels, Debts, Sum and Sums of Money, and all the perſonal Eſtate whatſoever of the ſaid *J. R.* of which he was poſſeſſed or intitled unto, or which any other Perſon or Perſons was or were poſſeſſed **In Truſt** for him at the Time he became Bankrupt, or at any Time ſince; and all the Right, Title, Intereſt, Property, Claim and Demand whatſoever, of him the ſaid *W. C.* of, in or to the ſame, or any Part thereof, as Aſſignee of the Eſtate and Effects of the ſaid *J. R.* and the ſaid Commiſſioners, Parties thereto, being the major Part of the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, in Conſideration of 5*s.* to them or one of them in Hand alſo paid by the ſaid *B. C.* and *D. E.* did as much as in them lay, and they lawfully might, ratify and confirm unto the ſaid *B. C.* and *D. E.* all and ſingular the ſaid Goods, Wares and Chattels, Debts, Sum and Sums of Money, and other Things, and all the Eſtate whatſoever and whereſoever, of and belonging to the ſaid *J. R.* therein before ordered, bargained, ſold, diſpoſed, aſſigned and ſet over by the ſaid *W. C.* Party thereto; **To hold** to the ſaid *B. C.* and *D. E.* their Executors, Adminiſtrators and Aſſigns,

Upon

Upon Truſt nevertheleſs to and for the Uſe, Benefit and Advantage, of all the Creditors of the ſaid *J. R.* who had then already ſought, or ſhould thereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, according to the Limitations and Directions of the ſeveral Statutes in that Behalf made and provided, and to and for no other Uſe, Intent or Purpoſe whatſoever, as in and by the ſaid laſt recited Indenture of Aſſignment, Relation being thereunto had, may more fully and at large appear. **And whereas** by an Order of the preſent Lord Keeper of the Great Seal of *Great Britain*, made on the Day of Inſtant, founded upon the Petition of and Creditors of the ſaid *J. R.* preferred to the ſaid Lord Keeper, his Lordſhip upon hearing the ſaid Petition read, and what was alledged by the Counſel for the ſaid Petitioners, and by the Conſent of the Counſel for the Aſſignees, the ſaid *B. C.* and *D. E.* did (amongſt other Things) **Order** that the ſaid *B. C.* and *D. E.* at their deſire ſhould be diſcharged from being Aſſignees of the ſaid Bankrupt's Eſtate and Effects, and that the major Part of the ſaid Commiſſioners named in the ſaid Commiſſion, ſhould cauſe due Notice forthwith to be given and publiſhed in the *London Gazette*, appointing a Time and Place for the Creditors of the ſaid *J. R.* to meet in order to proceed to the Choice of a new Aſſignee or Aſſignees, in the Room of the ſaid *B. C.* and *D. E.* and that the Creditors of the ſaid Bankrupt who ſhould be preſent at ſuch Meeting, ſhould

proceed to ſuch new Choice accordingly, and that after ſuch Choice the major Part of the ſaid Commiſſioners ſhould make and execute a new Aſſignment of the Eſtate and Effects of the ſaid Bankrupt remaining unreceived and not diſpoſed of, to ſuch Perſon or Perſons, who at ſuch Meeting ſhould be choſe to be ſuch new Aſſignee or Aſſignees, and that the ſaid *B. C.* and *D. E.* ſhould join in the ſaid Aſſignment to the ſaid new Aſſignee or Aſſignees, as by the ſaid in Part recited Order, Relation being thereunto alſo had, may more fully and at large appear: **And whereas** in Purſuance of the ſaid in Part recited Order, Notice in the *London Gazette* of the Day of this Inſtant was duly given, purporting that the Commiſſioners intend to meet on the Day of this Inſtant, at three of the Clock in the Afternoon at *Guildhall*, *London*, in order to proceed to the Choice of new Aſſignees in the Room of the ſaid *B. C.* and *D. E.* **And whereas** the Commiſſioners, Parties to theſe Preſents, in Obedience to and in Purſuance of the ſaid Order, and likewiſe of the ſaid Notice ſo given in the *London Gazette* as aforeſaid, met at the *Guildhall* of the City of *London*, this Day of in order to chooſe an Aſſignee or Aſſignees of the ſaid Bankrupt's Eſtate and Effects, and the major Part of the Creditors of the ſaid *J. R.* then preſent, and who had proved their Debts under the ſaid Commiſſion, and whoſe Debts reſpectively amounted to ten Pounds or upwards, did nominate, elect and chooſe, the ſaid *A. F.* to be the ſole Aſſignee of the

Eſtate

Eſtate and Effects of the ſaid *J. R.* remaining unreceived and not diſpoſed of, in the Room of the ſaid *B. C.* and *D. E.* **Now this Indenture witneſſeth**, That the ſaid *B. C.* and *D. E.* in Obedience to and in Purſuance of the ſaid recited Order, and in Conſideration of the Sum of 10*s.* of lawful Money of *Great Britain*, to them in Hand paid by the ſaid *A. F.* at or before the Sealing and Delivery of theſe Preſents, and alſo in Conſideration of the Covenants herein after, on the Part and Behalf of the ſaid *A. F.* his Executors, or Adminiſtrators, covenanted by him to be performed, by the Conſent and Direction of the ſaid Commiſſioners, Parties to theſe Preſents, teſtified by their being made Parties to and Sealing and Delivering hereof, **Have** ordered, bargained, ſold, diſpoſed, aſſigned and ſet over, and by theſe Preſents **Do** order, bargain, ſell, diſpoſe, aſſign and ſet over, unto the ſaid *A. F.* his Executors, and Adminiſtrators, **All** and ſingular the Goods, Wares, Chattels, Debts, Sum and Sums of Money, and all the perſonal Eſtate whatſoever, of the ſaid *J. R.* of which he was poſſeſſed or intitled unto, or which any other Perſon or Perſons, was or were poſſeſſed in Truſt for him at the Time he became Bankrupt, or at any Time ſince, and all the Right, Title, Intereſt, Property, Claim and Demand whatſoever, of them the ſaid *B. C.* and *D. E.* of, in or to the ſame, or any Part thereof, as Aſſignees of the Eſtate and Effects of the ſaid *J. R.* and the ſaid Commiſſioners, Parties to theſe Preſents, being the major Part of

the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, in Conſideration of 5 *s.* to them or one of them, in Hand alſo paid by the ſaid *A. F.* **Have** ratified and confirmed, and by theſe Preſents **Do**, as much as in them lie, and they lawfully may, ratify and confirm, unto the ſaid *A. F.* **All** and ſingular the ſaid Goods, Wares and Chattels, Debts, Sum and Sums of Money, and other Things, and all the Eſtate whatſoever and whereſoever, of and belonging to the ſaid *J. R.* herein before ordered, bargained, ſold, diſpoſed, aſſigned and ſet over by the ſaid *B. C.* and *D. E.* Parties hereto; **To have and to hold**, aſk, demand, ſue for, recover, levy and receive the ſaid Goods, Wares, Chattels, Debts, Sum and Sums of Money, and other Things, and all other the Effects whatſoever, of or belonging to the ſaid *J. R.* hereby ordered, bargained, ſold, diſpoſed, aſſigned and ſet over, or hereby mentioned or intended ſo to be unto the ſaid *J. R.* his Executors, Adminiſtrators and Aſſigns, **Upon Truſt**, nevertheleſs, to and for the Uſe, Benefit and Advantage, of all the Creditors of the ſaid *J. R.* who have already ſought, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, according to the Limitations and Directions of the ſeveral Statutes in that Behalf made and provided, and to and for no other Uſe, Intent or Purpoſe whatſoever; **And** the ſaid *A. F.* doth for himſelf, his Heirs, Executors and Adminiſtrators, covenant, promiſe and agree, to and with the ſaid Commiſſioners,

Parties

Patries to theſe Preſents, and to and with every of them by theſe Preſents, that he the ſaid *A. F.* his Executors, Adminiſtrators or Aſſigns, ſhall and will with all convenient Speed, by all lawful and equitable Ways and Means, uſe his utmoſt Endeavours to recover and get in the ſeveral Goods, Wares and Chattels, Debts, Sum and Sums of Money, and all other the Eſtate and Effects of the ſaid *J. R.* and after Poſſeſſion had and obtained of the ſaid Goods, Wares and Chattels, Debts, Sum and Sums of Money, Eſtate and Effects whatſoever, or any Part thereof, ſhall and will ſell and diſpoſe of the ſame, to and for the moſt and beſt Value he can get for the ſame; **And further**, that he the ſaid *A. F.* his Executors, Adminiſtrators and Aſſigns, ſhall and will from Time to Time, and at all Times hereafter, upon reaſonable Requeſt and Notice to him given for that Purpoſe, render and give unto the ſaid Commiſſioners, Parties to theſe Preſents, or the major Part of the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, and the major Part of the Commiſſioners to be named in and by any renewed Commiſſion, which may be awarded againſt the ſaid *J. R.* at ſuch Time and Place as they ſhall appoint, a true, juſt and perfect Account in Writing, under the Hand and Seal of the ſaid *A. F.* his Executors and Adminiſtrators, of what and how much Money or other Satisfaction, he the ſaid *A. F.* his Executors and Adminiſtrators, ſhall have had, recovered and received, by virtue or means of this preſent Deed of Aſſignment,

or

or otherwiſe, out of the Eſtate and Effects of the ſaid *J. R.* and ſuch Money or other Satisfaction, as upon ſuch Account ſhall appear to be had, raiſed and received by the ſaid *A. F.* his Executors or Adminiſtrators, he the ſaid *A. F.* his Executors or Adminiſtrators, ſhall and will truly pay or cauſe to be paid unto them the ſaid Commiſſioners, Parties to theſe Preſents, or the major Part of the ſaid Commiſſioners in and by the ſaid Commiſſion named, or to the ſaid Commiſſioners to be named in any ſuch renewed Commiſſion, or the major Part of them, or to ſuch Perſon or Perſons as they ſhall appoint, to the End the ſame or other Satisfaction may be, by them the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, or the major Part of them, ordered, diſpoſed, diſtributed and divided, unto and amongſt all and every the Creditors of the ſaid *J. R.* who have already ſought, or ſhall hereafter in due Time come in and ſeek Relief by virtue of the ſaid Commiſſion, according to the Limitations and Directions of the ſeveral Statutes therein mentioned, proportionably according to the ſeveral Debts owing to them ſeverally and reſpectively from the ſaid *J. R.* And Laſtly, the ſaid *A. F.* doth hereby for himſelf, his Heirs, Executors and Adminiſtrators, covenant, promiſe and agree, to and with the ſaid Commiſſioners, Parties to theſe Preſents, their Heirs, Executors and Adminiſtrators, that he the ſaid *A. F.* his Executors and Adminiſtrators, ſhall and will from Time to Time, and at all Times hereafter, well and ſuf-

ſufficiently ſave, defend, keep harmleſs and indemnified, the ſaid Commiſſioners in and by the ſaid Commiſſion named and authorized, and alſo the ſaid *B. C.* and *D. E.* their Executors and Adminiſtrators, and every of them, their and every of their Bodies, Lands, Tenements, Goods and Chattels, of and touching or concerning all and all Manner of Action and Actions, Suits, Arreſts, Troubles, Coſts, Damages, and Expences whatſoever, which they or any of them ſhall ſuſtain or be put unto, for or by reaſon of this preſent Deed of Aſſignment, or any other Act or Acts, Thing or Things, lawfully done or executed by virtue of the ſaid Commiſſion, or the ſaid recited Aſſignment, or their or any of their lawful Intermeddling in any of the Eſtate of the ſaid *J. R.* In Witneſs whereof the ſaid Parties to theſe Preſents, have hereunto interchangeably ſet their Hands and Seals the Day and Year firſt above written.

A TABLE

A TABLE TO THE Principal Matters.

A.

Account, Balance thereof only to be paid on ſettling mutual Credit, 178. Depoſition thereof, 422. Bankrupt's Books thereof, to be delivered to Aſſignees upon Oath, 126. Aſſignees to be attended by Bankrupts after Allowance of their Certificates for ſettling them, 128, 225. Aſſignees muſt keep Books thereof, 130. Accounts between two Merchants, one whereof is become a Bankrupt, 288. As to ſettling them between Creditors and Bankrupt, 356. As to ſettling Aſſignees, 359.

Action cannot be brought by an Attorney for his Fees, till a Month after the Delivery of his Bill, 54. *in Margin.* Commiſ-

ſioners ſubject to an Action for not purſuing the Acts of Parliament; but not for an Error in Judgment, 61. Aſſignees may bring Action of *Trover*, 139. Aſſignee may have an Action of Debt for an Eſcape, 151. Aſſignee of a Bankrupt Partner may bring an Action againſt the other, 288. Of Eſcape lies againſt Sheriff for letting Bankrupt go at large, 338. Action againſt Bankrupt diſcharged by his Certificate, 231.

Act of Bankruptcy, Debt contracted after it, no Ground for a Commiſſion, 49, 366. Yet a Bond taken for a ſimple Contract Debt after it, ſhall not prevent ſuch Creditors petitioning for a Commiſſion, 50. Seizure on an Execution, muſt be before one committed, 106. Sale of Goods after it not void, but after a Commiſſion iſſued utterly ſo; whether Goods delivered antecedent to it, but accepted ſubſequent, are bound by it, 124. Creditors who become ſo between it and a Commiſſion, are relievable, 203. Where there is one between becoming Bail on Error and the Affirmance, the Party is not diſcharged from his Recognizance, 260. Bankrupt cannot prove his own Act of Bankruptcy, 342. Warrant to apprehend and commit a Perſon to Gaol, who refuſed to attend and give Evidence relative thereto, 397. For what are Acts of Bankruptcy ſee Chap. 3. p. 18 to 42. What are not, ſee Chap. 4. p. 38.

Acts of Parliament must be purſued by Commiſſioners, or elſe they are ſubject to an Action; but not for an Error in Judgment, 61.

Adminiſtratrix, Debt due to the Wife as ſuch, will not intitle her Huſband to petition for a Commiſſion, 50.

Admittance, Bargain and Sale of a Copyhold by Commiſſioners, paſſes the Eſtate and veſts it in the Aſſignées without it, 90, 91.

Adjournment to Priſon where Bankrupt is in Execution, *&c.* Memorandum thereof, 465.

Adventurers in the *Eaſt India* or *Guinea* Company, or in the Royal Fiſhing Trade, not liable to the Bankrupt Laws, 11.

Advertiſement of the Party being declared a Bankrupt, to be inſerted in the *Gazette*, 407. Of Notice of confirming Bankrupt's Certificate, 475.

Advowſon, Grant of one to a *Feme Covert* Sole Merchant, ſaleable, 96.

Affidavit of Debt muſt be made before a Petition can be preferred for a Commiſſion, 45. Bankrupt's ſworn in *Ireland* admitted, 343. Of the petitioning Creditor's

ditor's Debt, 386. Of the due Execution of a Letter of Attorney, 427. Of the Service of a Petition, 463. Of Bankrupt that his Certificate was fairly obtained, 473. Of seeing the Creditors of Bankrupt sign his Certificate, 474. Where two Persons saw the Creditors sign, 475.

Affirmance on Error, where an Act of Bankruptcy happens between becoming Bail and the Affirmance thereon, the Party is not discharged from his Recognizance, 260, 261.

Affirmation of Debt must be made by a *Quaker*, 45. Form thereof, 420.

Agent's Act cannot be affirmed as to Part, and avoided as to the Rest, 142.

Agreement, &c. for a Mortgage by one before his Bankruptcy made void, 121. Assignee not intitled to one made with the Bankrupt, 122. A Delivery to *A.* to the Use of *B.* upon a precedent Consideration is not countermandable, but vests the absolute Property in *B.* before Agreement, 147.

Aliens are subject to the Bankrupt Laws, 3.

Allowance of Bankrupt's Certificate, 477. Assignees to be attended by Bankrupts after it, for settling Accounts, *&c.* 128, 225. Creditors to be heard against it, 211. Equity will not set aside a Bond given

given by a Bankrupt to a Creditor to prevent his oppoſing it, 240.

Allowance for Bankrupt's Attendance, 225.

Allowance, what Bankrupts are not intitled to any, 227. To Perſons making Diſcovery of Bankrupt's Eſtate, 312. Aſſignees to have all juſt ones, 131. To Bankrupts if their Effects produce 10*s.* 12*s.* 6*d.* or 15*s.* in the Pound, 226.

Appearance, Bankrupt diſcharged on a common one, 262.

Appointment of Commiſſioners, 57. Of Aſſignees to be noticed in *Gazette*, 68. Of the Meſſengers, 379.

Arbitration, Aſſignees with Conſent of Creditors may ſubmit Diſputes to it, 129, 185.

Arreſt, if Defendant renders in Diſcharge of his Bail, and lies two Months, he is a Bankrupt from the firſt Arreſt, 170. Bankrupt to be free from it during Examination, if not in Cuſtody before, 222.

Aſſignable, Legacy left to a Wife not aſſignable upon the Bankruptcy of the Huſband, nor Lands deviſed to a Bankrupt's Wife, 109. Poſſibility of a Right belonging to the Bankrupt is aſſignable, 112. Deviſe to a Bankrupt's Wife to her ſepa-

rate Uſe is not aſſignable, 113. Nor for her Maintenance; nor a Bond given on Marriage to leave a Bankrupt's Wife a Sum of Money; otherwiſe of ſuch a contingent Bond, 114. Nor Lands deviſed to a *Feme Covert*; nor a Settlement made by a Man when not a Trader, 115. Nor a Covenant for the Renewal of a Leaſe; nor Truſt Stock, 120. Nor Teſtator's Eſtate againſt the Executor, 121. Obligation taken in another's Name to Bankrupt's Uſe aſſignable, 119. So is the Equity of Redemption of a Mortgage, 120.

Aſſignees to pay Charges of Commiſſion, 52, 129. May diſcharge Clerk to the Commiſſion, 56, 130. May be choſen by the Commiſſioners, 67. The Removal of them and Appointment of others, to be noticed in the *Gazette*, 68. Huſband before he receives his Wife's Fortune becomes Bankrupt, they are not intitled to it without making her ſome Proviſion, 110, 111, 112. If Bankrupt's Wife employs another to buy Bonds, and when bought delivers them to her; whether they may come on the Buyer, 112. Not intitled to an Agreement made with a Bankrupt, 122. Choice of them; Books of Accounts to be delivered to them upon Oath; to be attended by Bankrupts, 126, 221. Penalty on Officer detaining Bankrupt from attending them; to appoint a Perſon to attend Bankrupt in Priſon with Books, *&c.* 127, 223. May ſettle mutual Credit; with Conſent of Creditors may ſubmit

mit Diſputes to Arbitration; may compound Debts; not to commence Suits in Equity without Conſent of Creditors, 129, 153, 184, 185, 186. Muſt keep Books of Account; to pay in Money according to Creditors Direction, and indemnified; when and how to make Dividends; to produce Accounts, 130. To be allowed juſt Allowances; each of them to have a Duplicate of the Order of Dividend; to take Receipts in a Book; Form thereof, 478. *at Bottom in Italics.* When and how to make final Dividends; to give in their Accounts upon Oath, 131. How anſwerable and liable, 132. Each is chargeable only with his own Receipts; but if one pays Money to the other he remains ſtill chargeable by the Creditors, 136. To Reward Diſcoverers of Bankrupt's Effects, 137. Bankrupt's Debts veſted in them; Defendants may wage Law againſt them, 138. Notice of Aſſignment not neceſſary; need not ſhew how Party became Bankrupt; nor how himſelf Aſſignee; may bring an Action of *Trover*, 139. May declare on a Promiſe to the Bankrupt, 140. May have an Action of Debt for an Eſcape, 141. Bound by the Statute of Limitations, 152. How intitled to the Goods of the Bankrupt, as againſt other Perſons who claim a Property in them, 155. Have the Property by Relation from the Time of the Bankruptcy, ſo as to avoid all meſne Acts, 179. How bound, 171. Purchaſer without Notice not accountable to them; Bankrupt puts out 1000*l.* to

East India Company in *J. S.*'s Name, *J. S.* may receive the Money without being accountable to them, 190. Goods conſigned to a Bankrupt may be prevented from coming to them; what Award ſhall bind them, 191. Creditors may remove them choſen by Commiſſioners; new Ones ſame Power as the old Ones, 193. Notice of their Removal to be given in *Gazette*, 194. On Money received a Promiſſory Note is given by a Perſon who had Money owing him, the Note is aſſigned; it ſhall not be eſteemed a Receipt in their Hands, 201. Their Books of Account may be inſpected by Creditors, 211, 356. Debt for Choice of them muſt be 10*l.*; may be removed by the Creditors, 212, 361. Bankrupt to deliver them Copy of his Examination ten Days before; Bankrupt after Allowance of his Certificate to attend them in ſettling Accounts, *&c.* 225. Diſcharged on paying the Crown's Debt, 279. A Bankrupt Partner may bring an Action againſt the other, 288. What they muſt prove, 344. May declare on a Promiſe to the Bankrupt; to a Declaration on Promiſe to them, *Non Aſſumpſit* to the Bankrupt is an ill Plea, 345. Need not ſhew how Party became Bankrupt, 352. Their Duty, *&c.* as to their Selling Bankrupt's Eſtate; as to ſettling their Accounts, 359. As to unjuſt ones; as to their neglecting to get in Bankrupt's Effects, 360. In caſe one dies, 362. Of Bond cannot take out a Commiſſion, 366. Depoſition by a Bankrupt on their Behalf,

half, 421. Memorandum of the Choice of them, 429. Precedent of an Aſſignment to them, 434. Petition to Lords Commiſſioners by them on Behalf of a Bankrupt for further Time to ſurrender, 461. Notice from Commiſſioners to them to make a Dividend, 477. Aſſignment from the Commiſſioners of Bankrupt to new Ones, the former being removed (at their own Deſire) by Order, and after a Temporary Aſſignment had originally been made, 482.

Aſſignment, no Schedule to be to it, 125. Notice thereof not neceſſary, 139. Under a joint Commiſſion paſſes the ſeparate Eſtate likewiſe, 281. What Aſſignment of Bankrupt's Effects by him is fraudulent, 313. Precedent of a Temporary one to the Meſſenger in order to take Place of an Extent, 408. Memorandum of executing it, 431. Precedent of one to Aſſignees, 434. To Aſſignees after a Temporary one, 441. From the Commiſſioners of Bankrupt, to new Aſſignees, the former ones being removed (at their own Deſire) by Order, and after a Temporary one had originally been made, 482.

Aſſumpſit, Aſſignee may bring it, 140.

Attendance, Bankrupt's Allowance for it, 225.

Attorney at Law may be a Bankrupt, 6. Not obliged to come in under a Commiſſion,

ſion, but may retain his Client's Papers till paid his whole Demand, 200. Depoſition for his Fees, 422.

Attorney, Letter of, muſt be from Creditors in foreign Parts to authorize ſigning Bankrupt's Certificate, 233. Precedent of a general one, 425. Exception of Warrant thereof in a Depoſition, 419.

Award, what ſhall bind Aſſignees, 191. Bankrupt diſcharged of a Contempt, in not performing it, 261.

Author, his Depoſition, 423.

Authority, Chancellor's as to ſuperſeding Commiſſions, 364.

B.

Bail, if Defendant renders in Diſcharge of it, and lies two Months in Priſon, he is a Bankrupt from the firſt Arreſt, 170. When too late to plead Bankrupt's Certificate to a *Scire facias* againſt them, 234. Where there is an Act of Bankruptcy between becoming Bail on Error and the Affirmance, the Party is not diſcharged from his Recognizance, 260. Bankrupt ſurrendered thereby after Judgment, for a Debt due before the Bankruptcy, diſcharged, 263. Relievable as a Creditor, 195.

Baker,

Baker, is liable to the Bankrupt Laws, 8.

Balance of an Account only to be paid on ſettling mutual Credit, 178. Depoſition thereof, 422.

Bank, Member of, is not liable to the Bankrupt Laws, 12.

Bankers are liable to the Bankrupt Laws, 3. Their ſtopping Payment is no Act of Bankruptcy, 38, 39.

Bankrupt, Import of the Word, 2. To be attended by the Commiſſioners if in Priſon upon an Execution, 65. Not conforming, or not anſwering Interrogatories, to be apprehended, 68. His Eſtate may be ſold by the Commiſſioners by Deed inrolled; Commiſſioners may ſend their Warrants aboard Ships for Bankrupt's Effects, 70. His Goods may be ſeized in Priſon; his Eſtate ſhall be aſſigned to Aſſignees choſen by the Creditors; may be examined by Commiſſioners, 71. Whether he may be licenſed to go at large to treat about his Debts, 79. Nobody bound to diſcover Dealings with him having no Notice of the Bankruptcy, 84. Commiſſioners to declare to him how they have diſpoſed of his Effects, and alſo to make Payment of the Overplus to him, his Heirs or Executors, 85. No Survivorſhip if he be a Joint-tenant, 89. The Bankrupt Statutes do not affect the Intereſt of

of Lords of Manors, 91. Not to be Tenant by the Curteſy, 97. Lands conveyed by him may be ſold, unleſs, *&c.* 98. So may Goods poſſeſſed by him, 102. So may Things diſpoſed of by him; Sale made by him after a Commiſſion iſſued is void, though the Commiſſioners have not ſeized his Effects, 108. Huſband before he receives his Wife's Fortune becomes Bankrupt, Aſſignees not intitled to it without making her ſome Proviſion, 110, 111. If his Wife dies, Aſſignees intitled to the Whole, 111. If his Wife employs another to buy Bonds with his Money, and when bought delivers them to her, whether Aſſignees may come on the Buyer; Poſſibility of Right belonging to him aſſignable, 112. Deviſe to his Wife for her ſeparate Uſe not aſſignable, 113, 191. Goods ſent to a Man, who before they are paid for becomes Bankrupt, not reſtorable, otherwiſe if ſent to a Factor for Sale; Obligation taken in another's Name to the Bankrupt's Uſe aſſignable, 119. Mortgage from him not to be impeached, 120. Aſſignee not intitled to an Agreement made with him, 122. His Outlawry will not defeat Creditors, 124. *A.* puts a Sum of Money at Intereſt to the *Eaſt India* Company, and takes a Bond for it in the Name of *J. S.* and afterwards becomes a Bankrupt, *J. S.* and not *A.*'s Creditors will be intitled to the Money, 122. Bond in Truſt for him, after it is aſſigned by the Commiſſioners, Truſtee releaſes, Releaſe void, 123. Sale of Goods by him after

after Act of Bankruptcy not void; but after a Commiſſion iſſued utterly ſo, 124. Aſſignees to appoint a Perſon to attend him in Priſon with Books, *&c.* 127. Aſſignee need not ſhew how Party became ſo, 139. Aſſignee may declare on a Promiſe to him, 140. What meddling with his Effects is a Converſion, 141. How far Aſſignee ſhall be intitled or not, to his Goods as againſt other Perſons who claim a Property in them, 155. If Defendant renders in Diſcharge of his Bail and lies two Months in Priſon, he is a Bankrupt from the firſt Arreſt, 170. Note indorſed to his Debtor after the Bankruptcy cannot be ſet off, 184. What Compoſition between Creditors and him will be valid, 186. Puts out 1000*l.* to *Eaſt India* Company in *J. S.*'s Name, *J. S.* may receive the Money without being accountable to the Aſſignees, 190. Goods conſigned to him may be prevented from coming to Aſſignees, 191. Bankrupt Laws to be beneficially conſtrued for Creditors, 195. Obligor in a joint Bond where one of the Obligees becomes Bankrupt, how relievable, 200. Whether his Factor may retain, 202. To be diſcharged from contingent Debts, 204, 209. Creditors to receive a Dividend of his Eſtate, 209. Creditors to be at the Expence of bringing him (if in Cuſtody) before Commiſſioners, 210. Creditors to be heard againſt the Allowance of his Certificate; Creditors may recover 100*l.* of Gaoler on being refuſed Sight of him in Priſon, 211. Cre-

ditors

ditors to have Goods, &c. of a Bankrupt Felon, 213. Creditors to reward Diſcoverers of his Effects, 214. Not ſurrendering within forty-two Days Notice, ſubmitting to be examined, conforming to the Statutes, or embezling Goods to 20*l.* Value, to ſuffer Death without Clergy; his Goods to go to Creditors; Lord Chancellor, &c. may enlarge Time for his Surrender; not conforming, to be apprehended by Warrant from Judges or Juſtices of the Peace, 216, 217, 336. So apprehended on Conformity to have the Benefit of the Act, 218. Refuſing to be examined to be impriſoned; or not anſwering Interrogatories, 219. If *Habeas Corpus* brought, Court may recommit him, 220. Defrauding Creditors by Perjury of 10*l.* to be pilloried; to deliver up Books of Accounts, &c. to the Aſſignees on Oath; to attend Aſſignees, 221. Has liberty to inſpect his Books, &c. and to take Extracts from them, and to be free from Arreſts, &c. during Examination, if not in Cuſtody before; if arreſted, Officer to diſcharge him upon producing Commiſſioners, &c. Summons, 222. Penalty on Officer detaining him from attending Aſſignees, 223. His Perſon, when protected, 224. To deliver Aſſignees Copy of his Examination ten Days before; after Allowance of his Certificate to attend Aſſignees in ſettling Accounts, &c. his Allowance for Attendance, 225. Impriſonment for Non-attendance; his Allowance

Allowance if his Effects produce 10*s.* 12*s.* 6*d.* or 15*s.* in the Pound, 226. If not 10*s.* in the Pound, what Allowance; what Bankrupt is not intitled to any Allowance; not intitled until he has obtained his Certificate, 227. If impriſoned after Certificate allowed, how to be diſcharged, 228. Note given by him to induce a Creditor to ſign his Certificate, who pleads 5 *Ann. c.* 22. 229. His Certificate before fourteenth of *May* 1729, on Conformity confirmed, 230. Actions, *&c.* againſt him diſcharged; may plead the General Iſſue; Debts due to him as Executor not within 5 *Geo.* 2. *c.* 30. *ſect.* 7. 231. His Certificate, Evidence of the Proceedings, 232. His not diſcloſing a Fraud in Creditors ſigning his Certificate makes it void, 233. Having ſlipt the Time for pleading his Certificate not relievable, 234. Creditors cannot come in under the Commiſſion, and proceed at Law too againſt him, 236. Unleſs they will waive all Benefit under the Statute, 237. Equity will not ſet aſide a Bond given by him to a Creditor, to prevent his Oppoſing the Allowance of his Certificate; Form of his Certificate, 240. His Certificate does not diſcharge him from a Contract between him and his Landlord, 224. Note given by him payable at a future Day, is not diſcharged by his Certificate, 260. Where after his Certificate allowed, he is ſued for a Debt due before his Bankruptcy, the Court, on Circumſtances of the Caſe, will relieve, though it will

will not on miſpleading only, 241. Conſtructions on the Stat. of 5 *Geo.* 2. relating to him, 256. Diſcharged of a Contempt in not performing an Award; diſcharged from a Judgment given after his Bankruptcy for a Debt due before, 261. His Wife diſchargedon a common Appearance, 262. Surrendered by Bail after Judgment for a Debt due before the Bankruptcy, diſcharged, 263. Extent againſt him diſcharged; Goods extended before Party becomes a Bankrupt, though delivered by *Liberate*, afterwards bound being *in Cuſtodia Legis*, 280. Of joint Obligee's becoming Bankrupt, 287. Aſſignee of Bankrupt Partner may bring an Action againſt the other; Accounts between two Merchants, one whereof is a Bankrupt, 288. One joint Trader becomes Bankrupt, his Share only is aſſignable, 289. Where one Partner is Bankrupt and the other not, 290. How far his Acts from the Time of the Bankruptcy ſhall be over-reached, 291. As to his ſelling his Goods *bona fide*, 293. As to his ſelling or mortgaging his Lands, 295. As to his pledging his Goods, 308. As to his paying Debts due before the Bankruptcy; as to his aſſigning his Debts, 310. Allowance to Perſons making Diſcovery of his Eſtate, 312. What Aſſignment of his Effects by him is fraudulent, 313. In what Caſe his future Effects ſhall be liable, 328. Future Effects of a ſecond Bankrupt continues his Property till ſeized, 329. Action of Eſcape lies againſt Sheriff for letting him go at large, 338.

338. Gaoler ſuffering him to eſcape, forfeits 500 *l.* 339. Gaoler to receive him committed to his Cuſtody, and to give Notice thereof to the Commiſſioners, 338. His Creditor no Witneſs to prove him a Gameſter, 340. Of what his Certificate is Evidence, 341. His Wife cannot be examined touching his Bankruptcy, 72, 342. Cannot prove his own Act of Bankruptcy, 342. In an Action of Debt Defendant pleads in bar that Plaintiff was a Bankrupt, and that his Debts were aſſigned. Bankrupt Statutes ill pleaded, 344. Aſſignees of a Commiſſion may declare on a Promiſe to him; to a Declaration on a Promiſe to an Aſſignee, *Non Aſſumpſit* to him is an ill Plea; when his Certificate may be pleaded, 345. Aſſignees need not ſhew how Party became Bankrupt, 352. As to ſettling Accounts between him and his Creditors, 356. Creditors cannot oppoſe his Certificate before they have proved their Debt, 357. Of conveying his Eſtate to Creditors, 367. If he applies to ſuperſede a Commiſſion, what he muſt prove, 368. Memorandum of the Commiſſioners declaring the Party Bankrupt, 402. Warrant to the Warden of the *Fleet* Priſon to bring him before the Commiſſioners at *Guildhall*, being in Cuſtody upon meſne Proceſs, and not in Execution, to be examined before them, 406. The Adver-vertiſement to be inſerted in the *Gazette* after the Party is declared Bankrupt, 407. Depoſition by him on Behalf of his Aſ-

ſignees, 421. Memorandum of his ſurrendering himſelf, and deſiring further Time for his Examination, 428, 449. Memorandum of Commiſſioners laſt Sitting when he does not appear, 459. Petition to Lords Commiſſioners by Aſſignees on his Behalf for further Time for him to Surrender, 461. Memorandum of the Time being enlarged for his Surrender, 464. His Death doth not abate the Commiſſion, 44. When his Effects are not ſufficient to pay the Expences of ſuing out a Commiſſion, againſt whom an Attorney muſt take his Remedy to recover them, 52, 53. Commiſſioners not to eat *&c.* at his Expence, 62. His Books of Accounts to be delivered to Aſſignees upon Oath; Aſſignees to be attended by him, 126. Aſſignees to be attended by him after Allowance of his Certificate, for ſettling Accounts, *&c.* 128. Aſſignees to Reward the Diſcoverers of his Effects, 137. His Debts veſted in Aſſignees, 138. His Certificate cannot be recalled when once allowed; his Certificate under a ſeparate Commiſſion diſcharges him from his joint Debts, 244. His Goods ſhall be rateably divided notwithſtanding any Judgment, Recognizance, *&c.* 317. Lands, *&c.* extendable which are purchaſed or do deſcend to him, 328. His Affidavit ſworn in *Ireland* admitted; Petition againſt him need not be given in Evidence; need not appear that he was indebted 100*l.* 343. As to his Certificate, 363. Commiſſion ſuperſeded becauſe the petitioning Creditor

tor had his Body in Execution, 365. Secretary of Bankrupts, his Office and Fees, 369. Adjournment to Priſon where he is in Execution, *&c.* Memorandum thereof, 465. His laſt Examination, 466. Certificate to the Lord Keeper of a Man's being found one upon Examination, and of his conforming to the ſeveral Statutes relating to Bankrupts, 469. His Affidavit that his Certificate was fairly obtained, 473. Affidavit of ſeeing his Creditors ſign his Certificate, 474. Aſſignment from the Commiſſioners of one to new Aſſignees, the former being removed (at their own Deſire) by Order, and after a Temporary Aſſignment had originally been made, 482.

Bankruptcy, Commiſſions thereof, whence derived, 1. Acts thereof, Chap. 3. p. 18 to 42. What Acts thereof have been repealed, Chap. 5. p. 41. Debt contracted after an Act of Bankruptcy, no Ground for a Commiſſion, 49. Yet a Bond taken for a ſimple Contract Debt after an Act of Bankruptcy ſhall not prevent ſuch Creditors petitioning for a Commiſſion, 50. Nobody bound to diſcover Dealings with the Bankrupt having no Notice of the Act of Bankruptcy, 84. Seizure on an Execution muſt be before an Act of Bankruptcy committed, 106. Legacy left to a Wife, not aſſignable upon the Huſband's Bankruptcy, 109. What Debt due to the Wife is diſcharged by the Huſband's Bankruptcy, 110. What Eſtate of a Wife is ſubject to her Huſband's Bankruptcy, 111. Con-

tingent Debts, how payable under a Bankruptcy, 115. An Agreement, &c. for a Mortgage by one before an Act of Bankruptcy, made void, 121. Bankruptcy of one joint Trader does not affect the other, 123. Sale of Goods by a Bankrupt after an Act of Bankruptcy committed is not void, but after a Commiſſion iſſued utterly ſo; whether Goods delivered antecedent to an Act of Bankruptcy, but accepted ſubſequent to it, were bound by it, 124, 125. If a Man ſells and does not commit an Act of Bankruptcy for five Years afterwards, the Purchaſer is ſafe, 168. Commiſſion avoids a Judgment after Act committed, 169. Creditors who become ſo between Act of Bankruptcy and Commiſſion, are relievable, 203. Bankruptcy of the Obligor does not diſcharge a Bond conditioned for his Executor to do an Act, 254. Where there is an Act of Bankruptcy between becoming Bail on Error and the Affirmance, the Party is not diſcharged from his Recognizance, 260, 261. Where the Breach of a Bond is after an Act of Bankruptcy, the Bond is not diſcharged, 261. Bankrupt diſcharged from Jugdment given after his Bankruptcy for a Debt due before, 262. Bankrupt ſurrendered by Bail after Jugdment for a Debt due before the Bankruptcy diſcharged, 263. As to a Bankrupt paying Debts due before his Bankruptcy, 310. Bankrupt's Wife cannot be examined touching her Huſband's Bankruptcy, 342. Plea thereof muſt ſet forth Petition and Debts owing

owing to petitioning Creditors, 343. Bankruptcy pleaded, 346. Commiſſion thereof ſuperſeded becauſe petitioning Creditor's Debt was contracted after Act thereof committed, 366. Warrantt to apprehend and commit a Perſon to Gaol who refuſed to attend and give Evidence relative to the Act of Bankruptcy, 397. Act of Bankruptcy proved, 413. A general Letter of Attorney under a Commiſſion thereof, 425.

Bargain and Sale of a Copyhold by Commiſſioners, paſſes the Eſtate and veſts it in the Aſſignees without Admittance, 90, 91. Commiſſioners muſt bargain and ſell by Deed indented and inrolled, and there is no relation, 167. Nothing paſſes by it before the Inrolment, 352. Precedent of a Deed thereof, 450. Memorandum of executing it, 457.

Barony, not ſaleable, 97.

Becoming Security makes a Man Bankrupt, 6.

Benefit of *5 Geo.* 2. *c.* 30. *ſect.* 5. when Bankrupt may have it, 218.

Benefit of Clergy, when Bankrupt is excluded from it, 217.

Bill of Fees, Solicitor may take out a Commiſſion for it whilſt under Taxation by order of Court, 52. An Attorney cannot

bring an Action for it, till a Month after the Delivery thereof, 54. Upon Commiſſions, to be ſettled by a Maſter in Chancery, 55.

Bill in Equity, Commiſſioners Examination no Bar to it againſt ſame Perſons, 85. When Creditors may bring it, 154.

Bill of Exchange, Depoſition thereof, 417.

Bills, *Exchequer,* circulating them does not make a Perſon liable to the Bankrupt Laws, 12. Payable at a future Day, Perſons having them may petition, 47, 208.

Book, Bankrupt's, he who has it in Execution cannot be a petitioning Creditor, 46, 196.

Bond to be given to Lord Chancellor, *&c.* by petitioning Creditor, for proving his Debt and finding Party Bankrupt, 45. When it may be aſſigned, 46. Perſons having one payable at a future Day may petition, 47. One given to Father-in-law of future Huſband, but not to be put in Suit unleſs Misfortunes happen to the Huſband, fraudulent, 110, 314. If Bankrupt's Wife employs another to buy Bonds with his Money, and when bought delivers them to her, whether Aſſignees may come on the Buyer, 112. Given on Marriage to leave a Wife a Sum of Money, not aſſignable; otherwiſe of ſuch a contingent

tingent Bond, 114. *A.* puts a Sum of Money at Intereſt to the *Eaſt India* Company, and takes a Bond for it in the Name of *J. S.* and afterwards becomes Bankrupt, *J. S.* and not *A.*'s Creditors will be intitled to the Money, 122. Bond in Truſt for a Bankrupt after it is aſſigned by the Commiſſioners, Truſtee releaſes, Releaſe void, 123. Obligor in a joint Bond where one of the Obligees becomes Bankrupt, how relievable, 200. What Bond is not within *7 Geo. cap. 31. ſect.* 2. 204. Conſtructions of *7 Geo.* as to Bonds payable at a future Day, 208. If Partner gives a ſeparate one for ſecuring a joint Debt, he may come under both Commiſſions, 282. Equity will not ſet it aſide becauſe given by a Bankrupt to a Creditor, to prevent his oppoſing the Allowance of his Certificate, 240. Conditioned for an Executor to do an Act, is not diſcharged by the Bankruptcy of the Obligor, 254. Where the Breach of it is after a Bankruptcy it is not diſcharged, 261. Where Extent does not reach a Bond not forfeited, 278. Commiſſion ſuperſeded becauſe Aſſignee thereof was the petitioning Creditor, 366. To Lord Keeper, *&c.* on granting a Commiſſion, 387. Depoſition of Principal and Intereſt thereon, 418. Exception thereof in a Depoſition, 419. 420.

Book, Aſſignees to take Receipts in it, 131. Form thereof, 478.

Books of Account, Bankrupts, to be delivered to Aſſignees, 126, 221. Aſſignees to ſuffer Bankrupt and two more to inſpect them, *&c.* and make Extracts from them, 127, 222. Creditors may inſpect Aſſignees, 211. So may Bankrupt, 222.

Books, Law, Patent for the ſole printing thereof void, and ſo not ſaleable, 97.

Bottomree Bonds, Obligee in them, *&c.* admitted to claim before contingency happens, 208.

Breach of a Bond where it is after a Bankruptcy the Bond is not diſcharged, 261.

Brewer may be a Bankrupt, 9.

Brokers are liable to the Bankrupt Laws, 3.

Butlers are not liable to become Bankrupts, 14.

Buyer, if Bankrupt's Wife employs another to buy Bonds with his Money, and when bought delivers them to her, whether Aſſignees may come on the Buyer, 112.

Buying in *England* only, and ſelling in *Ireland,* ſubjects a Man to the Bankrupt Laws, 7. But not Part of a Ship, 14. Nor buying and ſelling of Land, 15. But of perſonal Things only, 16.

C.

Carpenter may be a Bankrupt, ſo may a Ship one, 6. But not a mere working one, 14.

Caveat againſt a Commiſſion of Bankruptcy, of entering it, 367.

Certificates Bankrupts, when to be ſigned by the Commiſſioners, 65. After Allowance of them, Aſſignees to be attended by Bankrupt for ſettling Accounts, *&c.* 128, 225. Bankrupt's Creditors to be heard againſt the Allowance thereof, 211. Does not diſcharge him from a Contract between him and his Landlord, 224. See **Diſcharge.** Bankrupt impriſoned after allowed, how to be diſcharged, 228. Bankrupts Contracts to induce Creditors to ſign them void; Note given by Bankrupts to induce Creditors to ſign them, who pleads Statute 5 *Ann. c.* 22; Defendants ought to aver conformity in all Parts of the Statute by Words thereof, and not only by ſetting them out, 229, 230. Certificates before 14 *May* 1729, on Conformity, confirmed, 230. Diſcharges him from Actions, *&c.* 5 *Geo.* 2. *cap.* 30. *ſect.* 48. 231. Certificates, Evidence of the Proceedings, 232. To be entered of Record and Copies given in Evidence, 241. Petitioning Creditors ſigning them, unleſs Bankrupt ſhall diſcloſe the Fraud, ſhall make them null;

Letters of Attorney from Creditors in foreign Parts to authorize ſigning them, 233. Were no Evidence of the Bankruptcy before 5 *Geo.* 2. *c.* 30. *ſect.* 7 and 41. 233, 234. Bankrupts having ſlipt the Time for pleading them not relievable; cannot be pleaded to a *Scire facias* againſt Bail, 234. Diſcharges him from his Debts, 5 *Geo.* 2. *c.* 30. *ſect.* 7. 237. Creditors under 20 *l.* may petition againſt them, 238. Equity will not ſet aſide Bonds given by a Bankrupt to Creditors to prevent their oppoſing the Allowance of them, 240. Notes given by Bankrupts payable at future Days, are not diſcharged thereby, 260. Where Bankrupts after they are allowed are ſued for Debts due before their Bankruptcy, the Court on Circumſtances of the Caſes will relieve, though it will not on miſpleading only; ſeparate Creditors may come in under a joint Commiſſion to oppoſe them, 241. Certificates under a joint Commiſſion diſcharge each Partner as to his ſeparate Debts, 241, 242. Under a ſeparate Commiſſion diſcharge Partners as to their joint Debts, 242, 244. They cannot be recalled when once allowed, 244. When they may be pleaded, 345. Creditors cannot oppoſe them before they have proved their Debts, 357. As to them, 363. Form thereof, 469. Bankrupt's Affidavit that they were fairly obtained; Memorandum of the Commiſſioners ſigning them, 473. Affidavit of ſeeing Bankrupt's Creditors ſign them, 474. Allowance thereof, 477.

Certificates, Commiſſioners to give Creditors Certificates of their having proved their Debts, 68.

Chancellor, &c. to take Bond from petitioning Creditor, conditioned for proving his Debt and finding Party Bankrupt, 45, 46. May enlarge the Time for Bankrupt's ſurrendering, 65, 217. To appoint Clerk of Inrolments, his Office and Fees, 372. His Authority as to ſuperſeding Commiſſions, 364.

Chancery may refuſe to grant a Commiſſion without a Petition, 348.

Charges of Commiſſion to be aſcertained by the Commiſſioners, and paid by Aſſignees, 52, 66, 129.

Chattels, Perſonal of Bankrupt ſaleable, 95.

Choice of Aſſignees, 126. Debt for it muſt be ten Pounds, 212. Memorandum thereof, 429.

Claim, Memorandum thereof, 425.

Clerk to the Commiſſion cannot be one of the Commiſſioners, removed for Irregularity, 55. May be diſcharged by the Aſſignees, 130.

Clerk of the Inrolments, Lord Chancellor, &c. to appoint him, and his Office and Fees, 372.

Clerk, Deputy of the Papers of the Fleet Priſon, his Depoſition of the Perſon againſt whom, *&c.* being in the Cuſtody of the Warden of the ſaid Priſon, 401.

Clothier may be a Bankrupt, 4.

Collector, Land Tax Money in his Hands is a Debt due to the King, 276.

Commiſſion of Bankruptcy, whence derived, 1. The granting of it is a Right not a Favour, 42. But it cannot iſſue without a Petition, 42. Nor for a Debt leſs than 100*l.* except it be the Debt of Partners, 45. Nor five Years after Party becomes a Bankrupt, ſo as to affect *bona fide* Purchaſers, 42. But not underſtood of firſt Act of Bankruptcy, 43. Not to abate by the Death of the Bankrupt, 44. Nor of his Majeſty, 45. What is a Dealing under it, 44. If taken out fraudulently, *&c.* Bond may be aſſigned, 46. Not to be granted to a Creditor who has the Bankrupt's Body in Execution, 46, 365. Note of Hand of above ſix Years ſtanding no Ground for it; Aſſignee of a Bond cannot petition for it, 47, 366. Perſons having Bills, Notes, *&c.* payable at a future Day may, 47, 208. What Creditor though for 100*l.* cannot; Creditors who become ſo ſince a Man left off Trade cannot, 48. Purchaſers of Notes at an under Value may, 48. Debt contracted after

after Act of Bankruptcy, no Ground for it, 49. Yet a Bond taken for a ſimple Contract Debt, after an Act of Bankruptcy ſhall not prevent ſuch Creditor's petitioning for a Commiſſion, 50. Huſband cannot petition for one on Debt due to his Wife as Adminiſtratrix, 50, 365. Solicitor may take one out for his Fees whilſt his Bill is under Taxation by Order of Court, 51. Charges of it to be paid by Aſſignees, 52, 66, 129. Commiſſioners can examine a Perſon but once without a new One, 84. Sale made by a Bankrupt after it is iſſued is void, though the Commiſſioners have not ſeized the Effects, 108. How contingent Debts are payable under it, 115. Sale of Goods by a Bankrupt after Act of Bankruptcy not void, but after a Commiſſion is iſſued it is utterly void, 124. Aſſignee may diſcharge the Clerk to it, 130. Avoids a Judgment after Act of Bankruptcy committed, 169. Deviſe to a Bankrupt's Wife not liable to it, 191. Lending Money after it Iſſues; Creditors who become ſo between Act of Bankruptcy and Commiſſion are relievable, 203. Petitioning Creditor to pay Coſts of it till Aſſignees choſen; Creditors may come in within four Months after it is iſſued, 212. Creditors cannot come in under it and proceed at Law too againſt the Bankrupt, 236. Separate Creditors may come in under a joint one to prove Certificate, 241. Certificate under a joint one diſcharges each Partner as to his ſeparate Debts, 241. Certificate under a ſeparate one diſcharges Partners

Partners as to their joint Debts, 242. Commiſſion of Bankruptcy and an Extent iſſue the ſame Day, the Extent ſhall have the Preference, 277. An Aſſignment under a joint one paſſes the ſeparate Eſtate likewiſe; a joint and ſeparate Creditor cannot come under both unleſs, *&c.* 281. Separate Creditors may come in under a joint one, 289. Diſtributions under joint ones, 323. Proceedings under it how to be proved, 341. Chancery may refuſe to grant one without a Petition, and if they do it is good, 348. Renewed ones, Half Fees only to be paid thereon, 354. As to Clerk to it, 363. When it may be ſuperſeded, when renewed, and *Superſedeas* revoked; fraudulent ones to be ſuperſeded; Chancellor's Authority as to ſuperſeding them; not ſat on three Months ſuperſeded, 364. Not ſat on ſix Months ſuperſeded; ſuperſeded becauſe petitioning Creditors Debt was due to him as Huſband to his Wife Adminiſtratrix; becauſe the petitioning Creditor had the Bankrupt's Body in Execution, 365. Becauſe petitioning Creditor's Debts were barred by the Statute of Limitations; becauſe Aſſignee of a Bond was the petitioninig Creditor; becauſe petitioning Creditor's Debts were contracted after Act of Bankruptcy committed, 366. Becauſe no Debt due to petitioning Creditor; if Party is no Trader, or an Infant, it will be ſuperſeded; if Party gives Satisfaction to his Creditors, and they give him a Releaſe, it will be ſuperſeded, 367. If Bankrupt

Bankrupt applies to ſuperſede it, what he muſt prove; Coſts may be ordered, or Bond aſſigned, 368. It muſt be engroſſed on a treble Sixpenny Skin of Parchment, 391. Depoſition of the Sheriff's Officer having arreſted the Perſon againſt whom it was prayed, 400. A general Letter of Attorney under it, 425.

Commiſſioners of the Navy are not liable to become Bankrupts, 13.

Commiſſioner of Bankrupts cannot be Clerk to the Commiſſion, 53. How appointed, 57, 62, 64. Liſt of them, 57. May iſſue their Warrant to apprehend Bankrupt not attending or aſſiſting them in Diſcovery of his Eſtate, 69. May ſell Bankrupt's Eſtate by Deed inrolled; may break open Houſes; but not unleſs they be the Bankrupt's; may ſend their Warrant aboard Ships for Bankrupt's Effects, 70. May ſeize Bankrupt's Goods, *&c.* in Priſon; ſhall aſſign Bankrupt's Eſtate to Aſſignees choſen by the Creditors, 71. May examine Bankrupt and his Wife touching his Eſtate, but not touching his Bankruptcy, 72. Whether they may licenſe a Bankrupt in Priſon by their Commitment, to go at large to treat about his Debts, 79. May commit ſuch Perſons as have the Bankrupt's Goods, or are indebted to him, who refuſe to come before them, or to be ſworn when preſent, 80. Can examine a Perſon but once without a new Commiſſion, 84. Their Exa-

mination no bar to a Bill in Equity againſt ſome Perſons; to declare to the Bankrupt how they have diſpoſed of his Effects, and alſo to make Payment of the Overplus to the Bankrupt, his Heirs or Executors; Plea to an Action brought againſt them, 85. When their Power is determined, 86. To compound with Lord for Fine, and to be admitted, 88. Copyhold ſaleable by them if intailed by Cuſtom, 90. Bargain and Sale of a Copyhold by them paſſes the Eſtate and veſts it in the Aſſignees without Admittance, 90, 91. Whether they may not by the Equity of the 21 *Jac. c.* 19. appoint one to enter for a Condition broken, 99. Goods not ſo bound by Delivery of Writ of Exection to the Sheriff, but that the Commiſſioners may ſell them, 106. Sale made by a Bankrupt after a Commiſſion iſſued is void, though the Commiſſioners have not ſeized the Effects, 108. Bond in Truſt for a Bankrupt after aſſigned by them, Truſtee releaſes it, Releaſe is void, 123. Muſt bargain and ſell by Deed indented and inrolled, and there is no Relation, 167. Creditors may remove Aſſignees choſen by them, 193. Creditor's Proof rejected by them heard by the Court, 210. Creditors to be at the Expence of bringing Bankrupt in Cuſtody before them, 210. Bankrupt producing their Summons, to be diſcharged from an Arreſt, 222. King's Debt to be paid firſt notwithſtanding a Commiſſion, unleſs they have ſold, 276. Gaolers to give them im-

immediate Notice of Bankrupt committed to their Custody, 338. What is legal Evidence before them, 340. Memorial of their taking the Oaths, 395. Memorandum of their declaring the Party a Bankrupt, 402. Their Warrant to the Warden of the *Fleet* Prison, to bring before them at *Guildhall*, a Bankrupt who is upon mesne Process, and not in Execution, to be examined before them, 406. Memorandum of one of them taking the Oath who did not attend at the first Meeting, 416. Memorandum of their last Sitting when Bankrupt does not appear, 459. Notice from them to Assignees to make a Dividend, 477. Assignment from them of Bankrupt's Effects to new Assignees, the former Ones being removed (at their own Desire) by Order, and after a Temporary Assignment had originally been made, 482.

Commissioners Lords, for the Custody of the Great Seal of *Great Britain*, Petition to them by Assignees on a Bankrupt's Behalf, for further Time for his Discovery, 461.

Commitment, whether Commissioners may license a Bankrupt in Prison, thereby, to go at large to treat about his Debts, 79.

Company, *East India*, Members thereof are not subject to the Bankrupt Laws; nor of the *South Sea*, 12.

Compoſition, what between Creditors and Bankrupt will be valid, 186. Muſt be final, 187. Made with Parties ſigning bind the reſt; between Bankrupt and his Landlord, not diſcharged, 224. Plea thereof, 188.

Condition, whether the Commiſſioners may not by the Equity of 21 *Jac. c.* 19. *ſect.* 13. appoint one to enter for one broken, 99. Upon what Bankrupt's Certificates are to be granted, 227.

Conſent of Creditors, Aſſignees may ſubmit Diſputes to Arbitration with it, 129.

Conſideration, a Delivery to *A.* to the Uſe of *B.* upon a precedent one is not countermandable, but veſts the abſolute Property in *B.* before Agreement, 147. Of Debts, 361.

Conſtruction of 7 *Geo. c.* 31. *ſect.* 1. as to Bonds payable at a future Day, 208. On 5 *Geo.* 2. *c.* 30. relating to Bankrupts, 256.

Contempt in not performing an Award, of Bankrupt diſcharged therefrom, 261.

Contingent Debts, Creditors thereon, 209.

Contract to induce Creditors to ſign Bankrupts Certificates, void, 229.

Contribution,

Contribution, Creditors may prove Debts without paying it, 212, 315.

Conversion, what meddling with the Effects of a Bankrupt is one, 141. Not saying where, is cured by Verdict, 348.

Copartnership, Deposition on a Judgment by a Partner on it's Behalf, 423.

Copy of Examination to be applied for by Assignees ten Days before same to be, 128, 225. Of Certificates, *&c.* to be entered of Record and given in Evidence, 341.

Copyhold Lands assignable, 87. Saleable by Commissioners if intailed by Custom, 90. Bargain and Sale of them by Commissioners, passes the Estate and vests it in the Assignees without Admittance, 90, 91. Bound in Equity by defective Surrender, 93.

Costs, Witnesses allowed them, 83, 105. Of Commission, to be paid by petitioning Creditor till Assignees chosen, 210.

Covenant for the Renewal of a Lease not assignable, 120.

Counsellor at Law, may be a Bankrupt if he trades, 6.

Country, Plea of Bankruptcy must conclude to it, 231.

Court, Officer thereof, may be a Bankrupt, 4.

Court, Steward of an Inn thereof, cannot be Bankrupt, 14. Solicitor may take out a Commiſſion for his Fees, whilſt his Bill is under Taxation by Order of Court, 51. Creditor's Proof rejected by the Commiſſioners, heard by the Court, 210. Court may re-commit Bankrupt if *Habeas Corpus* brought, 220.

Cowkeeper has been adjudged a Bankrupt, 8.

Credit, on ſettling mutual Credit, Balance only to be paid, 178, 184.

Creditor petitioning, the Debt of one or more muſt be 100*l.* (except they be Partners) two 150*l.* three 200*l.* of which Affidavit or Affirmation muſt be made, and Bond given to Lord Chancellor to prove the Party a Bankrupt, 45. Muſt not have the Bankrupt's Body in Execution, 46, 365. May take out a Commiſſion on Notes, Bills, *&c.* payable at a future Day, 47, 208. Or one Bond for a ſimple Contract Debt after an Act of Bankruptcy, 50. But Huſband cannot on Debt due to his Wife as Adminiſtratrix, 50, 365. To be paid the Charges of ſuing out the Commiſſion by the Aſſignees, 66. To pay Coſts of Commiſſion till Aſſignees choſen, 210. Plea of Bankruptcy

ruptcy muſt ſet forth Debts owing to him, 343. Commiſſion ſuperſeded becauſe his Debt was barred by the Statute of Limitations, 365, 366. Becauſe he was only an Aſſignee of a Bond; becauſe his Debt was contracted after Act of Bankruptcy; becauſe no Debt due to him, 366. Precedent of the Affidavit of his Debt, 386. Depoſition of his Debt, 398.

Creditors, Commiſſioners not to eat at their Expence, 62. To be admitted by the Commiſſioners to prove their Debts, 67. Commiſſioners to give them Certificates of their having proved their Debt, 68. Commiſſioners ſhall aſſign Bankrupt's Eſtate to Aſſignees choſen by them, 71. What Marriage Settlement is fraudulent as to them, 110. *A.* puts a Sum of Money at Intereſt to the *Eaſt India* Company, and takes a Bond for it in the Name of *J. S.* and afterwards becomes Bankrupt, *J. S.* and not *A.*'s Creditors will be intitled to the Money, 122. Bankrupt's Outlawry will not defeat them, 124. With their Conſent Aſſignees may ſubmit Diſputes to Arbitration, 129. Aſſignees not to commence Suit in Equity without their Conſent, 129. Aſſignees to pay in Money according to their Direction, 130. If one Aſſignee pay Money to the other, he remains ſtill chargeable by them, 136. May remove Aſſignees choſen by Commiſſioners, 193. Judgment ones, 196. May inſpect Aſſignees Books of Account, 211, 356. May remove Aſſignees, 212.

To fix before chuſing Aſſignees where the Money ſhall remain, 212. What Compoſition between them and Bankrupt will be valid, 186. Thoſe who become ſo between Act of Bankruptcy and Commiſſion are relievable, 203. What are within 7 *Geo. cap.* 31. *ſect.* 1. 206. To receive a Dividend of the Bankrupt's Eſtate; how to prove their Debts, 209. Their Proof when heard by the Court; Penalty on their ſwearing to falſe Debts; to be at the Expence of bringing Bankrupts in Cuſtody before Commiſſioners, 210. To be heard againſt the Allowance of Bankrupt's Certificate; may recover 100*l.* of Gaoler on being refuſed Sight of a Bankrupt Priſoner, 211. May come in within four Months after Commiſſion iſſued, and at any Time before Diſtribution; may prove Debts without paying Contribution, 212. May come in after Diſtribution and four Months, but muſt not diſturb former Dividend; to have Goods, *&c.* of a Bankrupt Felon; receiving more in the Pound than others ſhall forfeit the ſame, 213. to reward Diſcoverers of Bankrupt's Effects, 214. Specialty ones ſhall have Intereſt; and all ſuch as are intitled to it at Law, ſhall have it under a Commiſſion, 215. Bankrupt defrauding them by Perjury of 10*l.* to be pilloried, *&c.* 221. Contracts to induce them to ſign Bankrupts Certificates, void; Note given by Bankrupt to induce a Creditor to ſign his Certificate who pleads Statute 5 *Ann. cap.* 22. 229. Fictitious one ſigning Bankrupt's Cer-

Certificate, unleſs Bankrupt diſcloſes the Fraud, makes it void; Letters of Attorney from them in foreign Parts to authorize ſigning Bankrupt's Certificate, 233. Cannot come in under the Commiſſion and proceed at Law too againſt the Bankrupt, 236. Unleſs they will waive all Benefit under the Statute, 237. Under 20*l.* may petition againſt Certificate, 238. Equity will not ſet aſide a Bond given by a Bankrupt to them to prevent their oppoſing the Allowance of his Certificate, 240. Separate ones may come in under a joint Commiſſion to oppoſe Certificate, 241. Partnerſhip Eſtate to be divided among Partnerſhip Creditors; Surplus thereof with ſeparate Eſtate among ſeparate Creditors, 286. Who not liable to refund, 292. When they may come in, 315. In what Caſes Bankrupt's future Effects ſhall be liable to them, 328. Whether ſeparate ones may come in under a joint Commiſſion, 281, 289, 325. Creditor a good Witneſs; but not to prove Bankrupt a Gameſter, 340. As to their Dividends, 355. As to ſettling Accounts between them and Bankrupt; they may prove a Debt not due upon Rebate, 356. Cannot oppoſe Bankrupt's Certificate before they have proved their Debt; as to joint and ſeparate ones, 357. When they muſt make their Election; as to Agreements between them, 358. Commiſſion ſuperſeded becauſe Bankrupt gave them Satisfaction, and they gave Bankrupt a Releaſe; of Bank-

rupt's conveying his Eſtate to them, 367. The Affidavit of a Perſon ſeeing them ſign Bankrupt's Certificate, 474. Affidavit where two Perſons ſaw them ſign, 475. Depoſitions of their Debts, 417 to 425.

Crown Debts, 265. Statute of Bankruptcy do not bind it, 278. Extent againſt a Bankrupt diſcharged, the Aſſignees paying the Crown's Debt, 279.

Curteſy, Bankrupt not to be Tenant by it, 97.

Cuſtody, Creditors to be at the Expence of bringing Bankrupts therein before Commiſſioners, 210. Gaolers to receive Bankrupt's committed to their Cuſtody, and to give immediate Notice thereof to the Commiſſioners, 338. Depoſition of the Deputy Clerk of the Papers of the *Fleet* Priſon, of the Perſon againſt whom, *&c.* being in the Warden's Cuſtody, 401.

Cuſtom, Copyhold ſaleable by Commiſſioners if intailed by it, 90.

Cuſtoms, Farmer thereof not Bankrupt, 14.

D.

Day, Conſtruction of 7 *Geo.* as to Bonds payable on a future one; Creditors taking Bills, *&c.* payable at a future one, may petition for a Commiſſion, 208. Note given

given by a Bankrupt payable at a future one, is not diſcharged by his Certificate, 260.

Damages, whether they be aſſignable, 105.

Dealings, what are ſuch under a Commiſſion, 44. Not bound to diſcover them with a Bankrupt, having no Notice of the Bankruptcy, 84.

Death of the Bankrupt does not abate the Commiſſion, 44. Nor of his Majeſty, 45. Bankrupt embeziling Goods to 20*l.* Value, to ſuffer Death without Benefit of Clergy, 217.

Debt of one petitioning Creditor or more muſt be 100*l.* of two 150*l.* of three 200*l.* (except they be Partners) of which Affidavit or Affirmarion muſt be made, and Bond to Lord Chancellor to prove the ſame, 45. Contracted after Act of Bankruptcy no Ground for a Commiſſion, 49, 50. Huſband cannot petition for a Commiſſion on one due to his Wife as Adminiſtratrix, 50. Creditors to be admitted to prove them, 67. To have Certificates *gratis* of their having proved them, 68. Aſſignable, 87, 105. Due to the Wife diſcharged by her Huſband's Bankruptcy, 110. Aſſignees may compound them, 129, 186. Bankrupts veſted in Aſſignees, 138. Action thereof, when Aſſignee may bring it, 140. Aſſignee may have it for an Eſcape, 151.

A Man

A Man obtains Judgment therein, and then becomes Debtor, how the Execution ſhall relate, 169. Though of different Natures, why they may be ſett off one againſt another, 178, 183. For Choice of Aſſignee muſt be 10*l.* 212. Creditors may prove them without paying Contribution, 212. Due to a Bankrupt as Executor, not within the Clauſe of 5 *Geo.* 2. *c.* 30. *ſect.* 7. 231. Of Perſons ſwearing to fictitious ones due to them from Bankrupt, 232. Where a Bankrupt after Certificate allowed is ſued for one due before his Bankruptcy, the Court on Circumſtances of the Caſe will relieve, though it will not on miſpleading, 241. Certificate under a joint Commiſſion, diſcharges each Partner as to his ſeparate ones, 241, 242. And under ſeparate Commiſſions diſcharges each Partner as to their joint ones, 242, 244. Whether Plantation ones are diſcharged, 245. Lord *Talbot*'s Opinion when Counſel as to Plantation ones, 245. Bankrupt diſcharged from a Judgment given after his Bankruptcy for one due before, 261, 262. Bankrupt ſurrendered by Bail after Judgment, for one due before the Bankruptcy, diſcharged, 263. Due to the Crown, 265. King's Debt to be paid firſt notwithſtanding a Commiſſion, unleſs the Commiſſioners have ſold; Land Tax Money in the Hands of the Collector is a Debt to the King, 276. Extent againſt a Bankrupt, joint and ſeparate Creditor may come under both Commiſſions, if diſcharged, the Aſſignees paying the Crown's Debt

Debt, 279. A Partner gives a ſeparate Bond for ſecuring a joint Debt, 282. As to Bankrupt's receiving Debts due to him from his Debtors, 291. As to his paying them due before the Bankruptcy; as to his aſſigning them, 310. Plea of Bankruptcy muſt ſet forth the petitioning Creditors, 343. Defendant pleads in Bar of an Action thereof, that Plaintiff was a Bankrupt, and that his Debts were aſſigned, 344. But cannot oppoſe Bankrupt's Certificate before he has proved it, 357. As to the Conſideration of them, 361. Commiſſion ſuperſeded, becauſe petitioning Creditor's was due to him as Huſband to his Wife Adminiſtratrix, 365. Becauſe barred by the Statute of Limitations; Becauſe contracted after Act of Bankruptcy, 366. Becauſe none due, 367. Affidavit thereof, 386. Depoſition thereof, 398. Proof of a Partnerſhip one for Goods ſold and delivered, 417.

Debts contingent, how payable under a Commiſſion of Bankruptcy, 115. Creditors thereon, 203. Bankrupts to be diſcharged therefrom, 204. Creditors how to prove them, 209, 356. Penalty on Creditors ſwearing to falſe ones, 210.

Debtor of the Bankrupt, Note indorſed to him after the Bankruptcy cannot be ſett off, 184. As to Bankrupt's receiving Debts due to him from them, 291. Is a good Witneſs, 340.

Declaration on Promiſe to an Aſſignee, *Non Aſſumpſit* to the Bankrupt is an ill Plea, 345.

Deed indented and inrolled, after Sale of Lands thereby, if the Huſband dies he does not die ſeiſed, 91. Commiſſioners muſt bargain and ſell thereby, and there is no Relation, 167. Of Bargain and Sale, 450.

Defendants may wage Law againſt Aſſignees, 138. When one is acquitted and the other found guilty, the latter cannot have a new Trial, 142. Ought to aver his Conformity in all Parts of the Statute by Words of his Plea, and not only by ſetting out the Certificate, 229, 230.

Delivery of Writ of Execution to Sheriff, Goods not ſo bound thereby, but that the Commiſſioners may ſell them, 106. To *A.* to the Uſe of *B.* upon a precedent Conſideration is not countermandable, but veſts the abſolute Property in *B.* before Agreement, 147.

Denizen, liable to be a Bankrupt, 3.

Depoſition, no parol Evidence to be admitted to explain it, 343. Of the petitioning Creditor's Debt, 398. Of the Trading, 399. Of the Sheriff's Officer having arreſted the Perſon againſt whom the Commiſſion is prayed, 400. Of the Deputy

Deputy Clerk of the Papers of the *Fleet* Priſon, of the Perſon againſt whom, *&c.* being in the Cuſtody of the Warden of the ſaid Priſon, 401. Of a Partnerſhip Debt for Goods ſold and delivered; on a Bill of Exchange, 417. For Principal and Intereſt on a Bond; for Horſe-hire, 418. For Money lent, 419. By a Bankrupt in Behalf of his Aſſignees, 421. For the Balance of an Account; for the Fees of an Attorney or Solicitor, 422. For an Author; on a Judgment by a Partner on Behalf of the Copartnerſhip, 423. For divers Sums of Money, 424.

Deputy, of the Patentee, 375. Depoſitions of the Deputy Clerk of the Papers of the *Fleet* Priſon againſt whom, *&c.* being in the Cuſtody of the Warden of the ſaid Priſon, 401.

Deſcended, Lands aſſignable, 100.

Deviſe to a Bankrupt, ſaleable, 96. But not one to a Bankrupt's Wife for her ſeparate Uſe, 113, 191. Nor for her Maintenance, 114.

Diſcharge of a Bankrupt from contingent Debts, 204, 209. Not to be from a Note given by him payable at a future Day, 260. Of a Contempt in not performing an Award; of a Judgment given after his Bankruptcy for a Debt due before, 261. Of a Bankrupt's Wife on a common Appearance, 262. Of a Bankrupt ſurrendered by

by Bail after Judgment for a Debt due before the Bankruptcy, 263. Of a Perſon not being legally committed by the Commiſſioners, 73. A fraudulent one, 235. From his Debts 5 *Geo.* 2. *c.* 30. *ſect.* 7. from Actions, 5 *Geo.* 2. *c.* 30. *ſect.* 48, 231. not to be from a Contract between him and his Landlord, 224. See **Certificate.**

Diſcoverers of Bankrupt's Eſtate to be rewarded by the Creditors, 137, 214.

Diſcovery of Bankrupt's Eſtate, Commiſſioners may iſſue their Warrant to apprehend Bankrupts not attending or aſſiſting Aſſignees in Diſcovery of their Eſtates, 69. Allowance to Perſons making any, 312.

Diſpoſed, Things diſpoſed of by a Bankrupt, 108.

Diſputes, Aſſignees with Conſent of Creditors may ſubmit them to Arbitration, 129, 185.

Diſtreſs for Rent on a Bankrupt's Goods, how to be made, 199.

Diſtribution of Lands, *&c.* deſcended after it, 101. Creditors may come in within four Months after Commiſſion iſſued, and at any Time before Diſtribution, 212. May come in after Diſtribution and four Months, but muſt not diſturb former Dividend, 213, 315, 316. Wife's Executor intitled

intitled to a Diſtribution, 320. Diſtribution under joint Commiſſions, 323.

Dividend of the Bankrupt's Eſtate, when and how to be made, 130. Order thereof to be filed among Proceedings; each Aſſignee to have a Duplicate, 131. Creditors to receive it, 209. They may come in after Diſtribution and four Months, but muſt not diſturb former Dividend, 213. The Meaning of diſturbing it, 355. Notice from Commiſſioners to Aſſignees to make one, 477. Order for it, 478. For a final one, 479.

Dower, not allowable to a Bankrupt's Wife, 97.

Drover of Cattle not to be deemed a Bankrupt, 13.

Duplicate of Order of Dividend, each Aſſignee to have one, 131.

Duty of the Meſſengers of Commiſſions of Bankrupts, 379.

Dyer may be a Bankrupt, 6.

E.

Eaſt India Stocks, having or dealing in them, ſubject no Perſon to the Bankrupt Laws; nor being a Member of the ſaid Company, 12. Nor being Adventurers therein, 11. *A.* puts a Sum of Money at Intereſt

Intereſt therein, and takes a Bond for it in the Name of *J. S.* and afterwards becomes a Bankrupt, *J. S.* and not *A.*'s Creditors will be intitled to the Money, 122.

Effects of Bankrupts, when they are not ſufficient to pay the Expences of ſuing out a Commiſſion, againſt whom an Attorney muſt take his Remedy to recover his Expences, 52, 53. Commiſſioners to declare to the Bankrupt how they have diſpoſed of them, and alſo to make Payment of the Overplus to the Bankrupt, his Heirs, or Executors, 85. Warrant may be ſent on board Ships for them, 70. Though not ſeized, yet a Sale made thereof by a Bankrupt after a Commiſſion iſſued is void, 108. What meddling with them is a Converſion, 141. Creditors to reward Diſcoverers thereof, 214. Allowance to Bankrupts if they produce 10*s.* 12*s.* 6*d.* or 15*s.* in the Pound, 226. Penalty on Perſons concealing them in Truſt, 312. What Aſſignment of them by a Bankrupt is fraudulent, 313. Future, when liable to Creditors, 328. As to Aſſignees Neglect to get them in, 360.

Employing a Sum of Money as a Venture, does not make a Man Bankrupt, 16.

England, buying therein and ſelling in *Ireland*, will make a Man liable to the Bankrupt Laws, 7.

Equity, Commiſſioners Examination no Bar to Bill therein, 85. Copyholds by defective Surrender bound therein, 93. Whether Commiſſioners may not by the Equity of 21 *Jac. c.* 19. *ſect.* 3. appoint one to enter for a Condition broken, 99. Of Redemption of a Mortgage aſſignable, 120. Aſſignees not to commence Suit therein without Conſent of Creditors, 129. When Creditor may bring a Bill therein, 154. Will not ſet aſide a Bond given by a Bankrupt to a Creditor to prevent his oppoſing the Allowance of Bankrupt's Certificate, 240.

Error in Judgment will not ſubject the Commiſſioners to an Action, 61. Where there is an Act of Bankruptcy between becoming Bail on Error and the Affirmance, the Party is not diſcharged from his Recognizance, 260.

Eſcape, Aſſignees may have an Action of Debt for it, 151. It lies againſt Sheriff for letting a Bankrupt go at large, 338.

Eſtates of Bankrupts, Commiſſioners may iſſue their Warrant to apprehend Bankrupt not attending or aſſiſting Aſſignees in Diſcovery thereof, 69. Muſt be ſold by Deed indented and inrolled, 70. To be aſſigned to Aſſignees choſen by the Creditors, 71. Bankrupt's Wife may be examined touching them, 72. Purchaſed before a Man becomes a Trader, not aſſignable, 93.

Nor Teſtator's againſt the Executor, 121. Creditors to receive a Dividend thereof, 209. Partnerſhip Eſtates to be divided among Partnerſhip Creditors; Surplus thereof with ſeparate Eſtates among ſeparate Creditors, 286. Allowance to Perſons making Diſcovery thereof, 312. As to Aſſignees ſelling them, 359. Of Bankrupt conveying them to Creditors, 367.

Evidence, Sheriff's Officer good Evidence for him upon being indemnified, 25, 26. Bankrupt's Certificate Evidence of the Proceedings, 232. But was not of the Bankruptcy before 5 *Geo.* 2. *c.* 30. *ſect.* 7. and 41, 233, 234. What is legal before the Commiſſioners, 340. Of what Bankrupt's Certificate; Copies of them given in Evidence; no parol Evidence to explain a Depoſition, 343. A Warrant to apprehend and commit a Perſon to Gaol who refuſed to attend in order to give Evidence relative to the Act of Bankruptcy, 397.

Examination, Aſſignees to apply for a Copy of it ten Days before the ſame to be, 128. Bankrupt to be free from Arreſts, *&c.* during it, if not in Cuſtody before, 222. Bankrupt to deliver Aſſignees a Copy thereof ten Days before, 225. Memorandum of the Bankrupt's ſurrendering himſelf, and deſiring further Time for it, 429, 449. Bankrupt's laſt Examination, 466.

Exception

Exception of a Promiſſory Note in a Depoſition thereof, 419. Of a Bond and Judgment on an indorſed Note, 420.

Exchange Royal Inſurance Company, Member thereof not liable to be a Bankrupt, 12.

Exchange, Depoſition on a Bill of it, 417.

Exchequer Bills, circulating them makes not a Man Bankrupt, 12.

Execution, Creditor who has the Bankrupt's Body therein, cannot petition for a Commiſſion, 46, 196, 365. Bankrupt therein to be attended in Priſon, 65. Goods therein ſaleable; Seizures thereon muſt be before an Act of Bankruptcy committed, 106. If executed it cannot be defeated by a Commiſſion of Bankrupt, 107. A Man obtains Judgment in Debt, and then becomes Debtor, how it ſhall relate, 169. Fraudulent, 359. Warrant to the Warden of the *Fleet* Priſon to bring before the Commiſſioners at *Guildhall*, a Bankrupt not in Execution, to be examined before them, 406. Memorandum of Adjournment to Priſon where Bankrupt is therein, 465.

Execution, an Affidavit of the due Execution of a Letter of Attorney, 427.

Executors of Bankrupts, to have the Overplus of their Effects made over to them, 85. Teſtator's Eſtate not liable againſt him, 121. Debts due to Bankrupts as ſuch, not within 5 *Geo.* 2. *c.* 30. *ſect.* 7, 231. The Bankruptcy of the Obligor does not diſcharge a Bond conditioned for them to do an Act, 254. Wife's intitled to Diſtribution, 320.

Expence of ſuing out a Commiſſion, againſt whom an Attorney muſt take his Remedy, to recover it when the Bankrupt's Effects are not ſufficient to pay it, 52, 53. Commiſſioners are not to eat at the Bankrupt's or Creditors, 62. Creditors to be at the Expence of bringing Bankrupts in Cuſtody before Commiſſioners, 210.

Extended Lands ſaleble, 101.

Extent binds from the *Teſte*, 160. If an Extent and a Commiſſion of Bankruptcy iſſue the ſame Day, the Extent ſhall have the Preference, 277. Whether it does not reach Bonds not forfeited, 278. Diſcharged againſt a Bankrupt, Aſſignees paying the Crown's Debt, 279. Temporary Aſſignment to the Meſſenger in order to take Place thereof, 408.

Extracts, Aſſignees to ſuffer Bankrupts and two more to make them out of their Books, 127, 222.

F.

Factor may be a Bankrupt, 3. Goods ſent to one for Sale, who before they are paid for becomes Bankrupt, reſtorable, 119. Whether Bankrupt's Factor may retain, 202.

Farmer cannot be a Bankrupt, 13. Nor of the Cuſtoms, 14.

Father-in-law, Bond given to him of future Huſband, but not to be put in Suit unleſs Misfortunes happen to the Huſband, fraudulent, 110, 314.

Favour, the granting a Commiſſion is none, 42.

Fees, Solicitor may take out Commiſſion for them, whilſt his Bill is under Taxation by order of Court, 52. An Attorney cannot bring an Action for them, till a Month after the Delivery of his Bill, 54. *in Margin.* Under Commiſſions to be ſettled by a Maſter in Chancery, 55. Depoſition for an Attorney's or Solicitor's, 422. Half only to be paid upon renewing Commiſſions, 354. Of the Secretary of Bankrupt's, 369. Lord Chancellor, *&c.* to appoint Clerk of Inrolment; his Fees, 372. Of the Meſſengers of Commiſſions of Bankrupts, 379.

Felon Bankrupt, Creditors to have his Goods, *&c.* 213.

Feme Covert Sole Merchant, Grant of an Advowſon to her ſaleable, 96. Lands deviſed to her not aſſignable, 115. A remarkable Caſe of one, with Sir *Edward Northey*'s Opinion, 115.

Feme Sole Merchant may be a Bankrupt, 9.

Final Dividends, when and how to be made, 131.

Fine, Aſſignees to compound with Lords of Manors for it, and to be admitted, 88. Whether the Lords may have two, 90. Vendee may enter upon tendering it, 90.

Fleet Priſon, Depoſition of the Deputy Clerk of the Papers thereof, of the Perſon againſt whom, *&c.* being in the Cuſtody of the Warden of the ſaid Priſon, 401, Warrant to the Warden thereof to bring before the Commiſſioners at *Guildhall*, a Bankrupt who is upon meſne Proceſs and not in Execution, to be examined before them, 406.

Forfeitures, who ſhall recover them, and how they ſhall be employed, 85.

Fortune of a Wife may be ſettled on her Huſband till he fails, and then to her ſeparate Uſe, 109.

Fraud will make Bankrupt's Certificate void, unleſs he diſcovers it, 233.

Freehold Lands aſſignable, 87.

G.

Gameſter, Creditor of a Bankrupt no Witneſs to prove him one, 340.

Gaol, a Warrant to apprehend and commit a Perſon thereto, who refuſed to attend in order to give Evidence relative to the Act of Bankruptcy, 397.

Gaoler, of his being a Creditor, 203. To receive Bankrupt committed to his Cuſtody, and to give immediate Notice thereof to the Commiſſioners, 338. Suffering Bankrupt's, *&c.* to eſcape forfeits 500 *l.*; Penalty on his refuſing to produce his Priſoner, 339.

Gazette, to give Notice of Commiſſioners Meeting, 66. And of the Removal of Aſſignees and Appointment of others, 68. What Advertiſement is to be inſerted therein, after a Perſon is declared a Bankrupt, 407.

General Iſſue, Bankrupt may plead it, 231.

General Trading only, ſubjects a Man to the Bankrupt Laws, 16.

Gentleman private may be a Bankrupt, 5.

Goldbeater cannot be a Bankrupt, 17.

Goldſmith may be a Bankrupt, 9.

Goods of Bankrupt may be ſeized in Priſon, 71. Commiſſioners may commit ſuch Perſons as have them, 80. Sold in Market-overt, and Lunatick's aſſignable, 97. And ſuch as are poſſeſſed by the Bankrupt, 102. Or in Execution, 106. Sent to a Man who before they are paid for becomes Bankrupt, not reſtorable, otherwiſe if ſent to a Factor for Sale, 119. Sale of them by a Bankrupt after Act of Bankruptcy not void, but after a Commiſſion iſſued utterly ſo; whether Goods delivered antecedent to an Act of Bankruptcy, but accepted ſubſequent, were bound by the Bankruptcy, 124. How far Aſſignees ſhall be intitled or not to them, as againſt other Perſons who claim a Property in them, 155. Purchaſers thereof not bound to diſcover them; conſigned to a Bankrupt, may be prevented from coming to Aſſignees, 190. Creditors to have them of a Bankrupt Felon, 213. Bankrupt embeziling them to 20*l.* Value to ſuffer Death without Clergy; they

they are to go to Creditors, 217. Extended before Party becomes a Bankrupt, though delivered by *Liberate*, afterwards bound thereby, being *in Cuſtodia Legis*, 280. As to the Bankrupt's ſelling them *bona fide*, 293. As to his pledging them, 308. Shall be rateably divided notwithſtanding any Judgment, Recognizance, *&c.* 317. Depoſition of a Partnerſhip Debt for them ſold and delivered, 417.

Grant of an Advowſon to a *Feme Covert* Sole Merchant ſaleable, 96.

Grazier may be a Bankrupt, 13.

Groſs, uſing the Trade of Merchandizing by Way of Bargaining, *&c.* therein, makes a Man Bankrupt, 3.

Guildhall, Warrant to the Warden of the *Fleet* Priſon to bring before the Commiſſioners there, a Bankrupt upon meſne Proceſs, and not in Execution, to be examined before them, 406. Sittings to be there, 66.

Guinea Company, Adventurers therein not liable to become Bankrupts merely as ſuch, 11.

Gunfounder cannot be a Bankrupt, 15.

H.

Habeas Corpus, if brought by Priſoner, Judge may recommit him, 82, 220, 336.

Handi-

Handicraftsmen are not within the Statutes of Bankrupts; Husbandmen are not within the Bankrupt Statutes, 14.

Heirs to make Payment of the Overplus of the Bankrupt's Estate, 85.

Heirlooms may be sold, 97.

Houses may be broke open, but not unless they be the Bankrupt's, 70.

Husband cannot petition on a Debt due to his Wife as Administratrix, 50, 365. If he dies after Sale of his Lands by Deed indented and inrolled, he does not die seised, 91. Legacy left to a Wife not assignable upon his Bankruptcy, 109. Fortune of a Wife may be settled on him till he fails, and then to her separate Use, 109. Bond given to Father-in-law of future Husband, but not to be put in Suit unless Misfortunes happen to him, fraudulent, 110, 314. What Debt due to the Wife is discharged by his Bankruptcy, 110. Before he receives his Wife's Fortune he becomes Bankrupt, Assignee is not intitled to it without making her some Provision, 110, 111. What Estate of a Wife is subject to his Bankruptcy, 111. Bankrupt's Wife cannot be examined touching his Bankruptcy, 342.

I.

Joint Bond, Obligor in it, where one of the Obligees becomes Bankrupt, how relievable under the Commiſſion, 200.

Joint Commiſſion, ſeparate Creditors may come in under it to oppoſe Certificate; Certificate under it diſcharges each Partner as to his ſeparate Debts, 241. An Aſſignment under it paſſes the ſeparate Eſtate likewiſe, 281. Separate Creditors may come in under it, 239, 325. Diſtribution under it, 323.

Joint Creditor and a ſeparate one, cannot come in under both Commiſſions, 281. But otherwiſe if a Partner has a ſeparate Bond for ſecuring a joint Debt, 282. See 357.

Joint Debts, Certificate under a ſeparate Commiſſion diſcharges Partners as to them, 242, 244.

Joint Obligee, of his becoming Bankrupt, 287.

Joint Stock, whether having it makes a Man Bankrupt, 14.

Joint-tenant, no Survivorſhip if a Bankrupt becomes one, 89.

Joint Traders, what a good Payment to them, 124. His Share only aſſignable;

Payment to one is Payment to them all, 239.

Import of the Word Bankrupt, 2.

Impriſonment, Bankrupts for Non-attendance on the Aſſignees, 226.

Indented and inrolled, Deed thereof, after Sale of the Lands thereby if the Huſband dies, he does not die ſeiſed, 91. Commiſſioners muſt bargain and ſell thereby, and there is no Relation, 167.

India Caſt, Company, Adventurers therein not liable to become Bankrupts merely as ſuch, 11.

Indorſed Note to the Debtor of the Bankrupt after the Bankruptcy, cannot be ſet off, 184.

Infants are not liable to be Bankrupts, 14. 367.

Innkeeper, whether liable to be Bankrupt, 16, 17.

Inn of Court, Steward thereof cannot be a Bankrupt, 14.

Inrolled and indented, Deed thereof, after Sale of the Lands thereby if the Huſband dies, he does not die ſeiſed, 91. Commiſſioners muſt bargain and ſell thereby, and there is no Relation, 167.

Inrolment, nothing paſſes by Bargain and Sale before it, 352. Lord Chancellor, &c. to appoint Clerk thereof and his Fees, 372.

Inſurance Companies, Members thereof not liable to be Bankrupts merely as ſuch, 12.

Intereſt, the Statutes of Bankrupts do not affect the Lords of Manors, 91.

Intereſt of Money, *A.* puts a Sum of Money out at Intereſt to the *Eaſt India* Company, and takes a Bond for it in the Name of *J. S.* and afterwards becomes a Bankrupt, *J. S.* and not *A.*'s Creditors will be intitled to it, 122. Pawnee and ſpecialty Creditor ſhall have it; and all Creditors who are intitled to it at Law, 215. Depoſition for it on a Bond, 418.

Interrogatories, Commiſſioners may iſſue their Warrants to apprehend Bankrupts not anſwering them, 68. Or other Perſon not anſwering them, 81. Bankrupt not anſwering them to ſtand committed, 219.

Ireland, ſelling there and buying in *England* only, makes a Man Bankrupt, 7. Bankrupt's Affidavit ſworn there admitted, 343.

Ironmonger may be a Bankrupt, 4.

Irregularity, Clerk to a Commiſſion removed for it, 55.

Judges, Bankrupt not conforming to be apprehended by Warrant from them, 217, 336. May recommit the Priſoner on bringing his *Habeas Corpus*, 336.

Judgment, Error therein will not ſubject the Commiſſioners to an Action, 61. A Man obtains it in Debt and then becomes Debtor, how the Execution ſhall relate; Commiſſion avoids it after Act of Bankruptcy committed; Judgment Creditor, 169. Bankrupt diſcharged therefrom being given after his Bankruptcy for a Debt due before, 261. Bankrupt ſurrendered by Bail after it for a Debt due before the Bankruptcy, 363. Bankrupt's Goods ſhall be rateably divided notwithſtanding it, 317. Execution of a Warrant of Attorney to confeſs it in a Depoſition for Money lent, 419. In a Depoſition on an indorſed Note, 420. In a Depoſition thereof by a Partner on Behalf of the Copartnerſhip, 423.

Juſtices of the Peace, Bankrupt not conforming to be apprehended by Warrant from them, 217, 336.

K.

Keeper Lord, Certificate to him of a Man's being found Bankrupt upon Examination, and of his conforming to the ſeveral Statutes relating to Bankrupts, 469.

King's Death does not abate the Commiſſion, 45. His Debts to be paid firſt notnotwithſtanding a Commiſſion, unleſs the Commiſſioners have ſold; Land Tax Money in the Hands of the Collector is a Debt due to him, 276.

L.

Labourers are not within the Bankrupt Statutes, 14.

Land, buying and ſelling thereof will not make a Man a Bankrupt, 15. After Sale thereof by Deed indented and inrolled, if the Huſband dies, he does not die ſeiſed, 91. Conveyed in Truſt, 94. Lunatick's may be ſold, 97. Conveyed by the Bankrupt may be ſold unleſs, *&c.* or conveyed upon Condition, 98. Or intailed, 99. Or deſcended, 100. And after Diſtribution; extended, 101. Deviſed to a Bankrupt's Wife not aſſignable, 109. Nor to a *Feme Covert*, 115. Seller thereof not obliged to come in as a Creditor, 193. As to the Bankrupt's ſelling or mortgaging it, 295. Purchaſed or deſcended to a Bankrupt extendable, 328.

Landlord, how relievable, 197. Contract between him and Bankrupt not diſcharged by Certificate, 224.

Land Tax Money in the Hands of the Collector thereof, is a Debt to the King, 276.

Law Attorney at, may be a Bankrupt, 6.

Law Books, Patent for printing them not ſaleable, 97.

Law, Defendants may wage it againſt Aſſignees, 138. All Creditors who are intitled to Intereſt at it, are ſo under the Commiſſion, 215. Creditors cannot come in under the Commiſſion and proceed at Law too againſt the Bankrupt, 236.

Laws Bankrupt, their Origin, 1, 2.

Leaſe, Covenant for the Renewal of it, not aſſignable, 120.

Leaving off Trade, whether a Man may be a Bankrupt after it, 9, 10, 15.

Legacy aſſignable; but one left to a Wife is not aſſignable upon the Bankruptcy of the Huſband, 109.

Legatee relievable, 196.

Letter of Attorney from Creditor in foreign Parts to authorize ſigning Bankrupt's Certificate, 233. A general one under a Commiſſion of Bankruptcy, 425. An Affidavit of the due Execution thereof, 427.

Liberate, Goods extended before Party becomes Bankrupt, though delivered by it, afterwards bound thereby, being *in Cuſtodia Legis*, 280.

Limitation of Sittings to be appointed by Commiſſioners, 64.

Limitation Statute of, Aſſignee bound thereby, 152. Petition preferred to ſuperſede a Commiſſion, becauſe petitioning Creditor's Debt was barred thereby, 366.

Liſt of the Commiſſioners, 57, *&c.*

Locksmith may be a Bankrupt, 4.

London Inſurance Company, Member thereof not liable to be a Bankrupt merely as ſuch, 12.

Lord of Manor, Aſſignees to compound with him for Fine and to be admitted, 88. His Intereſt is not affected by the Statutes of Bankrupts, 91.

Lunaticks Lands and Goods aſſignable, 97.

M.

Maintenance, Deviſe to a Bankrupt's Wife for it not aſſignable, 114.

Manor, Lords thereof, whether they may have two Fines, 90. The Statutes of Bankrupts do not affect their Intereſt, 91.

Market Overt, Goods ſold therein ſaleable, 97.

Marriage, what Marriage Settlement is fraudulent as to Creditors, 110. Bond thereon to leave Wife a Sum of Money, not aſſignable, 114.

Maſter in Chancery to ſettle Bills of Fees under Commiſſions, 55.

Meeting, Commiſſioners are not to take more than 20*s.* a-piece at each, 62. Notice thereof to be given in the *Gazette*, 66. Memorandum of one of the Commiſſioners taking the Oaths who did not attend at the firſt, 416.

Member of Parliament may be a Bankrupt, 5.

Member of the Bank not ſubject to the Bankrupt Laws, 12.

Memorandum of the Commiſſioners declaring the Party a Bankrupt, 412. Of one of the Commiſſioners taking the Oath who did not attend at the firſt Meeting; at the firſt Sitting where nothing is done, 416. Of the Bankrupt's ſurrendering himſelf and deſiring further Time for his Examination, 428. Of Bankrupt's ſurrendering himſelf a ſecond Time, making Diſcovery and deſiring further Time to finiſh his Examination, 449. Of his not ſurrendering; Of the Choice of Aſſignees, 429. Of executing Bargain and Sale, 457. Of Commiſſioners laſt Sitting, when Bankrupt does

does not appear, 459. Of the Time being enlarged for a Bankrupt to ſurrender, 464. Of an Adjournment to Priſon when Bankrupt is in Execution, 465. Of ſigning Bankrupt's Certificate, 473.

Memorial of the Commiſſioners taking the Oaths, 395.

Merchandize, uſing the Trade thereof by Way of Bargaining, Exchange, Rechange, Bartry, Cheviſance, or otherwiſe, in Groſs or Retail, makes a Man Bankrupt, 3.

Merchant failing becomes Bankrupt, 3.

Merchant *Feme Sole* may be Bankrupt, 9.

Merchants, Accounts between two, one whereof is become Bankrupt, 288.

Meſſengers of Commiſſions of Bankrupts, their Appointment, Duty and Fees, 379. Temporary Aſſignment to one in order to take Place of an Extent, 408.

Miſpleading, where a Bankrupt after Certificate allowed, is ſued for a Debt due before his Bankruptcy, the Court on Circumſtances of the Caſe will relieve, tho' it will not on miſpleading, 241.

Money, employing it as a Venture in Trade does not make a Man Bankrupt, 16. Bond on Marriage to leave Wife a Sum of Money, not aſſignable, otherwiſe of

ſuch a contingent Bond, 114. *A.* puts it at Intereſt to the *Eaſt India* Company, and takes a Bond for it in the Name of *J. S.* and afterwards becomes Bankrupt, *J. S.* and not *A.*'s Creditors will be intitled to it, 122, 190. Aſſignees to pay it according to Creditors Direction, 130. If one Aſſignee pay it to the other, he reremains ſtill chargeable by the Creditors, 136. On its being received a Promiſſory Note is given by a Perſon who had Money owing him, the Note is aſſigned; it ſhall not be eſteemed a Receipt in the Hands of the Aſſignees, 201. Lending it after Commiſſion iſſues, 203. Creditors before chuſing Aſſignees to fix where it ſhall remain, 212. Land Tax Money in the Hands of the Collector, is a Debt to the King, 276. Depoſition for Money lent, 419. For divers Sums thereof, 424.

Monopoly not ſaleable, 97.

Months, if Defendant renders in Diſcharge of his Bail, and lies two Months, he is a Bankrupt from the firſt Arreſt, 170. Creditors may come in within four Months after Commiſſion, and at any Time before Diſtribution, 212. Diſtribution not to be made till after four, 315. And within eighteen after Commiſſion iſſued, 131. Commiſſion not ſat on ſix, ſuperſeded, 365. Or not three, 364.

Mortgage from a Bankrupt not to be impeached; Equity of Redemption of it aſſignable,

assignable, 120. An Agreement, *&c.* for it by one before his Bankruptcy, made void, 121.

Mortgagee Creditor, 196. To have Interest, 215. As to him, 357.

Mortgaging, as to the Bankrupt's mortgaging his Lands, 295.

Mutual Credit to be settled by Assignees, 129.

N.

Name, Obligation taken in another's to Bankrupt's Use, assignable, 119. Bankrupt puts out 1000*l.* to *East India* Company in *J. S.*'s Name, *J. S.* may receive the Money without being accountable to the Assignees, 190.

Navy, Commissioner thereof not liable merely as such to be a Bankrupt, 13.

Neglect of Assignees to get in Effects, good Cause for their Removal, 360.

Nobleman may be a Bankrupt, 4.

Non-attendance of Bankrupts, their Imprisonment for it, 226.

Northey, Sir *Edward*'s Opinion on a remarkable Case of a *Feme Sole* Trader, 115.

Notes Promiſſory, payable at a future Day, Perſons having them may petition; of Hand of above ſix Years ſtanding no Ground for a Commiſſion, 47. Purchaſer of them at an under Value may petition, 48. Indorſed ones to the Debtor of the Bankrupt after the Bankruptcy, cannot be ſet off, 184. On Money received one is given by a Perſon who had Money owing him, the Note is aſſigned, it ſhall not be eſteemed a Receipt in the Hands of the Aſſignee, 201. What Notes are within 7 *Geo. cap.* 31. *ſect.* 1. 204. Given by a Bankrupt to induce a Creditor to ſign his Certificate, who pleads Statute 5 *Ann. c.* 22. 229. Given by a Bankrupt payable at a future Day, not diſcharged by his Certificate, 260. Perſon giving one becomes Bankrupt before it is payable, 260. Depoſition thereof, 419. Exception of a Bond and Judgment in a Depoſition on an indorſed one, 420.

Notice of Commiſſioners Meeting to be given in the *Gazette*, 66. Of Aſſignment not neceſſary, 139. Purchaſer without it not accountable to Aſſignees, 190. Of Removal of Aſſignees to be given in *Gazette*, 68, 194. Bankrupt not ſurrendering within forty-two Days thereof, guilty of Felony without Clergy, 216. Gaolers to give immediate Notice of Bankrupt's being committed to their Cuſtody, to the Commiſſioners, 338. From Commiſſioners to Aſſignees to make a Dividend, 477.

Number of Sittings to be appointed by the Commiſſioners, 64.

O.

Oath to be taken by Commiſſioners before they proceed, 62. Bankrupt's Books of Account to be delivered to Aſſignees thereupon, 126, 221. Memorial of the Commiſſioners taking it, 395. Memorandum of one of the Commiſſioners taking it who did not attend at the firſt Meeting, 416.

Obligation taken in another's Name to Bankrupt's Uſe, aſſignable, 119.

Obligees, where one of them becomes Bankrupt, how Obligor relievable under the Commiſſion, 200, 287. In Bottomrees, *&c.* admitted to claim, 208.

Obligor in a joint Bond where one of the Obligees becomes Bankrupt how relievable under the Commiſſion, 200. Bankruptcy does not diſcharge a Bond conditioned for Bankrupt's Executors to do an Act, 254.

Office of the Secretary of Bankrupts, 369. Lord Chancellor, *&c.* to appoint the Office of the Clerk of Inrolment, 372.

Officer of the Court may be a Bankrupt, 4.

Officers Sheriffs, good Evidence for the Sheriff upon being indemnified, 25, 26. Penalty on their detaining Bankrupt from attending Aſſignees, 127, 223. If Bankrupt arreſted, they are to diſcharge an arreſted Bankrupt upon his producing Commiſſioners, *&c.* Summons, 222. Depoſition of one of having arreſted the Perſon againſt whom the Commiſſion is prayed, 400.

Offices are ſaleable, 95.

Opinion of Lord *Talbot* when Counſel as to Plantation Debts, 245.

Order of Court, Solicitor may take out a Commiſſion for his Fees, whilſt his Bill is under Taxation thereby, 52.

Order of Dividend to be filed among Proceedings, and each of the Aſſignees to have a Duplicate thereof, 131, 478. Of final one, 479. Aſſignment from the Commiſſioners of Bankrupt to new Aſſignees, the former ones being removed (at their own Deſire) thereby, and after a Temporary Aſſignment had originally been made, 482.

Overplus of Bankrupt's Effects to be paid him, his Heirs, or Executors, 85.

Outlawry, Bankrupt's will not defeat Creditors, 124.

P.

Papers, Deputy Clerk thereof of the *Fleet* Priſon, his Depoſition of the Perſon againſt whom, *&c.* being in the Cuſtody of the Warden of the ſaid Priſon, 401.

Parliament Acts of, muſt be purſued by the Commiſſioners, or elſe they are ſubject to an Action, 61.

Parliament Members of, may be Bankrupts, 5.

Parties ſigning, Compoſition made with them, bind the reſt, 188.

Partner, in Loſs and Gain may be Bankrupt, 6. Certificate under a joint Commiſſion diſcharges each as to his ſeparate Debts, 241. Certificate under a ſeparate Commiſſion diſcharges them as to their joint Debts, 242. If Partner gives a ſeparate Bond for ſecuring a joint Debt, he may come under both joint and ſeparate Commiſſion, 282. Aſſignee of Bankrupt may bring an Action againſt the other Partner; Bail as to Partners, 288. Where one is a Bankrupt and the other not, 290. Depoſition by him on a Judgment on Behalf of the Copartnerſhip, 423.

Partnerſhip Debt, 100*l.* ſufficient to take out a Commiſſion though due to ſeveral Perſons; of which Affidavit or Affirmation

tion muſt be made, and Bond given to Lord Chancellor to prove the ſame, 45. Eſtate to be divided among Partnerſhip Creditors; Surplus thereof, with ſeparate Eſtate among ſeparate Creditors, 286. Proof thereof for Goods ſold and delivered, 417.

Patent for printing Law Books void, 97.

Patentee and his Deputy, 375.

Pawnbroker may be a Bankrupt, 10, 14.

Pawnee Creditor, 196. Shall have Intereſt, 215. As to him, 357.

Paying, as to a Bankrupt paying Debts due before the Bankruptcy, 310.

Payment of the Overplus of Bankrupt's Eſtates to be made to him, his Heirs, or Executors, 85. What a good one to joint Traders, 124. Stopping Payment no Act of Bankruptcy, 38, 39. To one joint Trader is Payment to them all, 289.

Penalty on Officer detaining Bankrupt from attending Aſſignees, 127, 233. On Creditors ſwearing to falſe Debts, 210. On Perſons concealing Effects in Truſt, 312. On Gaoler refuſing to produce his Priſoner, 339.

Perjury, the Penalty of committing it willfully, 83. The Penalty of procuring it; further

further Puniſhment for it, or Subornation thereof, 84. Bankrupts defrauding Creditors thereby of 10*l.* to be pilloried, *&c.* 221.

Perſonal Things, buying and ſelling them only, 16.

Petition, a Commiſſion cannot iſſue without one, 42. Againſt Bankrupt need not be given in Evidence, 343. Plea of Bankruptcy muſt ſet it forth, 343. Chancery may refuſe to grant a Commiſſion without one, 348. For Time to ſurrender, 459. To Lords Commiſſioners by Aſſignees on Behalf of a Bankrupt, for further Time to ſurrender, 461. Affidavit of the due Service thereof, 463. Of **Petitions** in general, 362. Where they are to be lodged, 363.

Petitioning Creditors Debts muſt be 100*l.*; two 150*l.* three 200*l.* 45. Muſt not have the Body in Execution, 46. Commiſſioners to aſcertain and order Aſſignees to pay him the Charges of ſuing out the Commiſſion, 66. To pay Coſts of Commiſſion till Aſſignees choſen, 210. Commiſſion ſuperſeded becauſe he had the Bankrupt's Body in Execution, 365. Becauſe his Debt was barred by the Statute of Limitations; becauſe he was Aſſignee of a Bond; becauſe his Debt was contracted after Act of Bankruptcy, 366. Becauſe no Debt due to him, 367. Affidavit of his Debts, 386. Depoſition of his Debt, 398. See **Creditor petitioning.**

Phyſicians may be Bankrupts, 5.

Plantation Debts, whether they are diſcharged; Lord *Talbot*'s Opinion when Counſel, thereon, 245.

Plea of Commiſſioners in an Action brought againſt them, 85. Of Compoſition, 188. Defendant ought to aver his Conformity in all Parts of the Statute by Words of his Plea, and not only by ſetting out the Certificate, 229, 230. Of Bankruptcy muſt ſet forth Petition and Debts owing to petitioning Creditors, 343. To a Declaration on Promiſe to an Aſſignee, *Non Aſſumpſit* to the Bankrupt is an ill one, 345.

Pledging, as to a Bankrupt pledging his Goods, 308.

Poſſeſſion and Term ſaleable, 97.

Poſſibilities may be ſold, 96, 112.

Pound, Creditors receiving more therein than others, ſhall forfeit the ſame, 212. Allowance to Bankrupts if their Effects produce 10*s.* 12*s.* 6*d.* or 15*s.* in the Pound, 227. If not 10*s.* 227.

Power of Commiſſioners, when determined, 86. New Aſſignee's Power ſame as the old ones, 193.

Precedents. See **Aſſignment, Bargain** and **Sale, Depoſitions, Memorandum,** and other Heads.

Preference, Extent to have it of a Commiſſion of Bankruptcy, 277.

Principal and Intereſt on a Bond, Depoſition thereof, 418.

Priſon, Commiſſioners may ſeize Bankrupt's Goods, *&c.* therein, 71. Whether Commiſſioners may licenſe a Bankrupt therein, by their Commitment to go at large to treat about his Debts, 79. Of the *Fleet*, Depoſition of the Deputy Clerk of the Papers thereof of the Perſon, againſt whom *&c.* being in the Cuſtody of the Warden thereof, 410. Of the *Fleet*, Warrant to the Warden thereof to bring before the Commiſſioners at *Guildhall*, a Bankrupt who is upon meſne Proceſs, and not in Execution, to be examined before them, 406. Memorandum of Adjournment thereto where Bankrupt is in Execution, *&c.* 465.

Priſoner Bankrupt, if *Habeas Corpus* brought by him, Judge may recommit, 82, 336. Penalty on Gaoler refuſing to produce him, 339.

Proceedings, Order of Dividend to be filed among them, 131. Bankrupt's Certificate Evidence of them, 232. Of Proceedings

ceedings in general under the Commiſſion, 341.

Promiſe, Aſſignee of a Commiſſion may declare on one to the Bankrupt, 345.

Promiſſory Notes, payable at a future Day, Perſons having them may petition, 47. Money received thereon given by a Perſon who had Money owing him, the Note is aſſigned; it ſhall not be eſteemed a Receipt in the Hands of the Aſſignee, 201. Perſons giving them become Bankrupts before payable, 260. Exception thereof in a Depoſition, 419.

Proof of Creditors Debts rejected by the Commiſſioners, heard by the Court, 210. Of a Partnerſhip Debt for Goods ſold and delivered, 417.

Property, how far Aſſignees ſhall be intitled or not to the Goods of the Bankrupt, as againſt other Perſons who claim Property in them, 155. A Delivery to *A.* to the Uſe of *B.* upon a precedent Conſideration is not countermandable, but veſts the abſolute Property in *B.* before Agreement, 147. Aſſignee has it by Relation from the Time of the Bankruptcy ſo as to avoid all meſne Acts, 170. Future Effects of a ſecond Bankrupt continues his till ſeized, 329.

Protection, Warrant thereof for Bankrupt's Perſon, 405.

Provision, Husband before he receives his Wife's Fortune becomes Bankrupt, Assignees not intitled to it, without making her some Provision, 110, 111.

Purchasers *bona fide*, not affected by a Commission of Bankruptcy, unless issued within five Years after the Party becomes Bankrupt, 42. Not bound to discover any Thing that may weaken their Title, 189. Of Goods not bound to discover them; without Notice not accountable to Assignees, 190. Of them in general, 263. See 196. Of Notes at an under Value may petition, 48.

Q.

Quakers Affirmation, 420.

Questions to be particularly specified in the Warrant of Commitment, for not answering Interrogatories, 82, 220.

R.

Realm, Persons out of it liable to become Bankrupts, 7.

Receipt, Assignees to take it in a Book, 131. Form thereof, 478. Each Assignee is chargeable only with his own, but if one pays Money to the other he remains still chargeable by the Creditors, 136. On Money received a Promissory Note is given

given by a Perſon who had Money owing him, the Note is aſſigned, it ſhall not be eſteemed one in the Hands of the Aſſignee, 201.

Receiver General of Taxes not liable to become Bankrupt merely as ſuch, 13.

Recognizance, when there is any Act of Bankruptcy between becoming Bail on Error and the Affirmance, the Party is not diſcharged therefrom, 260. Bankrupt's Goods ſhall be rateably divided, notwithſtanding any Recognizance, *&c.* 317.

Record, Certificates, *&c.* to be entered thereon, and Copies given in Evidence, 341.

Redemption, Equity thereof of a Mortgage aſſignable, 120.

Relation, there is none, and the Commiſſioners muſt ſell by Deed indented and inrolled, 167.

Releaſe of a Bond by Truſtee after aſſigned by the Commiſſioners is void, 123.

Remedy, againſt whom an Attorney muſt take it, to recover the Expences of ſuing out a Commiſſion when the Bankrupt's Effects are not ſufficient to pay them, 52, 53.

Removal

Removal of Assignees to be noticed in the *Gazette*, 68. See 360.

Renewal of a Lease, Covenant for it not assignable, 120.

Rent, saleable, 91. Rent Charge saleable, 97. Rent Seck, 98.

Repeal of Acts of Bankruptcy, Chap. 5. p. 41.

Reversion saleable, 98.

Right, the granting a Commission is a Right, 42. Possibility thereof belonging to the Bankrupt assignable, 112.

Royal Exchange Assurance Company, Members thereof not liable to be Bankrupts merely as such, 12.

Royal Fishing Trade, Adventurers therein not liable to be Bankrupts merely as such, 11.

S.

Sale, Bargain and Sale of Copyhold by Commissioners, passes the Estate and vests it in the Assignees without Admittance, 90. Of Lands by Deed indented and inrolled, if the Husband dies after it he does not die seised, 91. Nothing passes by Bargain and Sale before the Inrolment, 352. A Deed of Bargain and Sale, 450.

Memorandum of executing Bargain and Sale, 457. Made by a Bankrupt after a Commiſſion is void, though the Commiſſioners have not ſeized the Effects, 108. Goods ſent to a Factor to ſell, who before they are paid for becomes Bankrupt, reſtorable, 119. Of Goods by a Bankrupt after Act of Bankruptcy not void, but after Commiſſion iſſued utterly ſo, 124.

Saleſman may be a Bankrupt, 4.

Satisfaction, if Party gives it to his Creditors, and they give him a Releaſe, the Commiſſion will be ſuperſeded, 367.

Schedule, to be none to Aſſignment, 125.

Secretary of Bankrupts, his Office and Fees, 369.

Security, becoming, may ſubject a Man to be a Bankrupt, 6.

Seller of Land not obliged to come in as a Creditor, 195.

Selling in *Ireland* and buying in *England* only, makes a Man Bankrupt, 7. Of Land will not make a Man Bankrupt, 15. Of perſonal Things only makes a Man Bankrupt; alone will not make a Man Bankrupt, 16. As to the Bankrupt's ſelling his Goods *bona fide*, 293. As to his ſelling his Lands, 295.

Seizure on an Execution muſt be before an Act of Bankruptcy committed, 106. Warrant thereof, 403.

Separate Creditors may come in under a joint Commiſſion to oppoſe Certificate; Certificate under a joint Commiſſion diſcharges each Partner as to his ſeparate Debts, 241, 289, 325. Certificate under a ſeparate Commiſſion diſcharges Partners as to their joint Debts, 242, 244. An Aſſignment under a joint Commiſſion paſſes ſeparate Eſtate likewiſe; a joint and ſeparate Creditor cannot come under both Commiſſions, 281. See 286, 357.

Service of a Petition, Affidavit thereof, 468.

Set-offs, as to them, 359.

Settlement Marriage, what fraudulent as to Creditors, 110. Made by one when no Trader not aſſignable, 115.

Schoolmaſter not within the Bankrupt Statutes, 15.

Scire facias againſt Bail, when too late to plead Bankrupt's Certificate to it, 234.

Scrivener may be a Bankrupt, 9.

Share in the *Stationers* Company will not make a Man Bankrupt, 16. A joint

Trader becomes Bankrupt, his only assignable, 289.

Sheriff, his Officers good Evidence for him upon being indemnified, 25, 26. Goods not so bound by Delivery of Writ of Execution to him, but that the Commissioners may sell them, 106. Action of Escape lies against him for letting a Bankrupt go at large, 338. Deposition of his Officer having arrested the Person against whom the Commission is prayed, 400.

Shipboard, Warrant may be sent thither for Bankrupt's Effects, 70.

Ship, buying Part thereof does not make a Man Bankrupt, 14.

Ship Carpenter may be a Bankrupt, 6.

Shoemaker may be a Bankrupt, 4.

Single Act of Trading will not make a Man Bankrupt, 16.

Sitting, Number and Limitation to be appointed by Commissioners, 64. Memorandum at the first where Nothing is done, 416. Memorandum of Commissioners last when Bankrupt does not appear, 459.

Smith, Trading one may be a Bankrupt, 4.

Solicitor may take out a Commiſſion for his Fees, whilſt his Bill is under Taxation by Order of Court, 52. Depoſition for his Fees, 424.

South Sea Company, Member thereof not liable merely as ſuch to be a Bankrupt, 12.

Specialties, Creditor ſhall have Intereſt, 215.

Stationers Company, having a Share in it will not make a Man Bankrupt, 16.

Statutes of Bankrupts do not affect the Intereſt of Lords of Manors, 91. Whether Commiſſioners may not by the Equity of them appoint one to enter for a Condition broken, 99. Bankrupt not ſubmitting to be examined by virtue thereof, *&c.* to ſuffer Death, 216. Note given by a Bankrupt to induce a Creditor to ſign his Certificate who pleads them, 229. Defendant ought to aver his Conformity in all Parts of them, by the Words of his Plea, and not only by ſetting out the Certificate, 229, 230. Conſtructions thereon, 256. Do not bind the Crown, 278. Ill pleaded, 344.

Statute of Limitation, Aſſignees bound by, 152. Commiſſion ſuperſeded becauſe petitioning Creditors Debts were barred by it, 366.

Statute Merchant, Perſon having Defendant's Body in Execution thereon, cannot come in as a Creditor, 196.

Steward of an Inn of Court cannot be a Bankrupt, 14.

Stocks *Eaſt India*, having or dealing in them does not ſubject a Man to the Bankrupt Laws, 12.

Stock, Truſt, not liable, 120.

Stopping Payment no Act of Bankruptcy, 38, 39.

Subornation of Perjury, Puniſhment for it, 84.

Suit cannot be commenced by an Attorney for his Fees till a Month after Delivery of his Bill, 54. *in Margin.* Bond given by Father-in-law of future Huſband, but not to be put in Suit unleſs Misfortunes happen to the Huſband fraudulent, 110. Aſſignees not to commence it in Equity without Conſent of Creditors, 129. As to Aſſignees bringing them, 360.

Superſedeas, when it may be revoked, 364.

Surplus of Partnerſhip Eſtate to be divided with ſeparate Eſtate among ſeparate Creditors, 286.

Surrender, Copyhold bound in Equity by defective one, 93. Lord Chancellor, &c, may enlarge Time for Bankrupt's, 217. Petition for Time for it, 459. Petition to Lords Commissioners by Assignees on Behalf of Bankrupt for further Time for it, 461. Memorandum of the Time being enlarged for a Bankrupt's, 464.

Surrendering, Time for it may be enlarged by Lord Chancellor, 65. Memorandum of the Bankrupt's surrendering himself and desiring further Time for his Examination, 428, 449. Of his not surrendering, 429.

Sureties may come in as Creditors, 195.

Survivorship, none if a Bankrupt be Joint-tenant, 89.

Sutlers to Armies not liable to be Bankrupts, 14.

T.

Talbot Lord's Opinion when Counsel as to Plantation Debts, 245.

Tanner may be a Bankrupt, 8.

Taylor may be a Bankrupt, 10. But a mere working one cannot, 13.

Tax, Land Tax Money in the Hands of the Collector is a Debt to the King, 276.

Taxation, Solicitor may take out Commission for his Fees, whilst his Bill is under Taxation by order of Court, 52.

Taxes, Receiver General thereof not liable to be a Bankrupt, 13.

Temporary Assignment to the Messenger in order to take Place of an Extent, 408.

Tenant by the Curtesy Bankrupt not to be, 97.

Bankrupt and Landlord, Contract between them not discharged by Certificate, 240.

Term, going out of Town to gain it is an Act of Bankruptcy, 29.

Term of Years saleable, 97.

Testator's Estate not liable against the Executor, 101.

Teste, Extent binds from it, 160.

Things disposed of by a Bankrupt saleable, 108.

Thomson a Bankrupt executed, 217 *in Margin.*

Title, Purchasers not bound to discover any Thing that may weaken it, 189.

Town, going out of it to gain the Term an Act of Bankruptcy, 29.

Town a Bankrupt executed, 271, in Marg.

Trade, whether a Man may be a Bankrupt after leaving it off, 8.

Trade Royal Fishing, Adventurers therein not liable to become Bankrupts, 15.

Trader failing makes him Bankrupt, 3. Estate purchased before a Man becomes one not assignable, 93. A remarkable Case of a *Feme Sole* Trader, with Sir *Edward Northey*'s Opinion, 115. Joint Trader's Bankruptcy does not affect the other, 123, 289. Payment to one is Payment to them all, 289.

Trading Smith may be a Bankrupt, 4. General necessary to subject a Person to the Bankrupt Laws, 16. Deposition thereof, 399, 413.

Trial of Bankruptcy, what necessary to be proved thereon, and how to prove it, 340.

Trover, Assignees may bring Action, 139. When it only lies, 140.

Trust Bond for a Bankrupt is assigned by the Commissioners, afterwards Trustee releases, Release void, 123.

Trustee of a Bond for a Bankrupt, if he releases it after it is assigned by the Commissioners, such Release is void, 123.

Trust

Trust Lands, conveyed therein may be sold, 94.

Trust, Penalty on Persons concealing Effects therein, 312.

Trust Stock not liable, 120.

V.

Value, Bankrupt embeziling Goods to 20*l.* Value to suffer Death without Clergy, 217.

Vendee may enter upon tendering Fine, 90.

Venture, employing a Sum of Money as such will not make a Man a Bankrupt, 16.

Victualler may be a Bankrupt, 9.

Vintner may be a Bankrupt, 9.

W.

Warden of the *Fleet* Prison, Deposition of the Deputy Clerk of the Papers thereof, against whom, *&c.* being in his Custody, 401.

Warrants may be issued to apprehend Bankrupts not conforming or not answering Interrogatories, 68. May be issued to apprehend them not attending or assisting Assignees in Discovery of their Estate, 369.

369. May be ſent aboard Ships for Bankrupt's Effects, 70. Queſtions to be particularly ſpecified in them when they are for not anſwering Interrogatories, 82. Bankrupts not conforming to be apprehended by them from Judges or Juſtices of the Peace, 217, 336. Form of them for ſummoning Witneſſes, 396. To apprehend and commit a Perſon to Gaol who refuſed to attend, in order to give Evidence relative to the Act of Bankruptcy, 397. Of Protection for Bankrupts Perſons, 405. To the Warden of the *Fleet* Priſon to bring before the Commiſſioners at *Guildhall*, a Bankrupt who is upon meſne Proceſs, and not in Execution, to be examined before them, 406.

Warrant of Attorney to confeſs Judgment; Exception thereof in a Depoſition, 419.

Weaver may be a Bankrupt, 16.

Weſtminſter 2. c. 11. p. 151.

Wife of a Bankrupt, Debt due to her as Adminiſtratrix, will not intitle her Huſband to petition for a Commiſſion, 50, 365. May be examined touching her Huſband's Eſtate, but not touching his Bankruptcy, 72, 342. Legacy left her not aſſignable on the Bankruptcy of her Huſband; her Fortune may be ſettled on her Huſband till he fails, and then to her ſeparate Uſe; Lands deviſed to her not aſſignable,

assignable, 109. What Debt due to her is discharged by her Husband's Bankruptcy, 110. What Estate of hers is subject to her Husband's Bankruptcy, 111. Assignees not intitled to her Estate without making her some Provision; if she employs another to buy Bonds with his Money, and when bought delivers them to her, whether Assignees may come on the Buyer, 112. Devise to her for her separate Use not assignable, 113. Nor for her Maintenance; otherwise of such a contingent Bond, 114. Devise to her not liable to the Commission, 191. Discharged, 262. Her Executor intitled to Distribution, 320.

Witnesses allowed their Costs, 83. Commissioners can examine them but once without a new Commission, 84. Debtor good one, but Creditor not, nor to prove him a Gamester, 340. Warrant for summoning them, 396.

Words, Defendant ought to aver his Conformity in all Parts of the Statute by Words of his Plea, 229, 230.

Working Taylor cannot be a Bankrupt, 13. Nor a working Carpenter, 14.

Writ of Execution, Goods not so bound by Delivery to the Sheriff, but that the Commissioners may sell them, 106.

FINIS.

MVSEVM BRITANNICVM